

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

BATES ENERGY OIL & GAS, LLC,)
Plaintiff and Counter-defendant,)
) No. SA:17-CV-808(XR)
 vs.)
) San Antonio, Texas
COMPLETE OIL FIELD SERVICES,) September 25, 2017
LLC)
SAM TAYLOR,)
Defendants and Counter-claimants,)
)
 vs.)
)
EQUITY LIAISON COMPANY,)
DEWAYNE D. NAUMANN,)
Counter-defendants.)

HEARING ON MOTION FOR PRELIMINARY INJUNCTION
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

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GAS, LLC:

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9
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1 (September 25, 2017.)

2 THE COURT: Thank you. Please be seated.

3 17-Civil-808, Bates Energy vs. COFS. Appearances, please.

4 MR. JEFFERSON: Your Honor, Lamont Jefferson
5 representing the counter-plaintiff, COFS.

6 THE COURT: Thank you.

7 MS. HYMAN: Good morning, Your Honor. Leslie Hyman
8 representing Equity Liaison Company and Dewayne Naumann.

9 MS. CLAUSEWITZ: Your Honor, Tiffany Clausewitz and
10 Shellie Reyes representing Bates Energy.

11 THE COURT: Thank you.

12 So we are here on a motion for preliminary
13 injunction. I guess I am just going to start off with the
14 questions. I mean, it appears we are disputing the 1 million
15 minus 40,000 that was deposited into Equity Liaison.

16 I mean, if that is the sole amount that we are
17 disputing, why doesn't Equity Liaison -- I mean, they are not
18 the owner of the money. Why don't they just deposit that in
19 the registry of the Court and then we settle all of the other
20 issues at a later point? I mean, isn't that the resolution
21 for all of this?

22 MS. HYMAN: Your Honor, there is not that much money
23 left. We can explain what is left, but I did offer to either
24 enter into -- well, I offered on Friday to enter into an
25 agreed preliminary injunction freezing the remaining funds and

1 turning over the documents you had ordered turned over. We
2 are equally open to putting the remaining money in the
3 registry of the Court.

4 THE COURT: How much money is left?

5 MS. HYMAN: There is, completely unencumbered,
6 \$308,662.35, if you don't account for some money that is --
7 well, there is a pending receivable of \$204,226.97, and then
8 there is about \$40,000 that is encumbered. So depending on
9 how you calculate it, it is either -- I mean, there is
10 \$308,622.35 in cash.

11 THE COURT: What is a pending receivable? I thought
12 the way this deal worked is that a million was deposited into
13 ELC and 3 million was deposited into --

14 MS. HYMAN: Amegy Bank.

15 THE COURT: -- Amegy.

16 MS. HYMAN: Yes.

17 THE COURT: And so I thought there was just this
18 deposit and then there would be withdrawals as the sand was
19 delivered. So how are there any pending receivables?

20 MS. HYMAN: My understanding is that Bates bought
21 some sand to -- for COFS that COFS hasn't paid for, and they
22 are trying to sell it to mitigate everybody's damages, and so
23 that \$204,000 is what they hoped to get for the sand that they
24 had already bought that COFS won't take.

25 THE COURT: And then the remaining 500,000, what

1 happened to that?

2 MS. HYMAN: I can put my client on and we can go
3 through the documents, but basically, 140 of it, 140,000 went
4 to demurrage and rail storage costs, on demand of counsel for
5 Bates Energy, for sand that was being stored because COFS
6 wouldn't take it.

7 Let's see. There was the sand -- that was
8 purchased. There was demands for money out of the escrow by
9 Bates Energy for liquidated damages. Let's see. Some
10 insurance for the railcars. That's mostly it. A little bit
11 of administrative fees.

12 THE COURT: And since I have you here, Ms. Hyman,
13 tell me, ELC, I mean, could it just unilaterally make these
14 withdrawals? Or I mean, I thought --

15 MS. HYMAN: No, Your Honor.

16 THE COURT: -- it required COFS to agree, so did
17 COFS agree to all of these withdrawals?

18 MS. HYMAN: They weren't unilateral to ELC. Nothing
19 was unilateral to ELC. Money came out of that account on the
20 unilateral instruction of COFS and then was replaced by money
21 from Amegy Bank. I am not sure why that happened, but it did.

22 THE COURT: Whoa, whoa, whoa. So there is not
23 3 million in Amegy anymore?

24 MS. HYMAN: There is not, Your Honor.

25 THE COURT: How much is in Amegy?

1 MS. HYMAN: About 2 -- yes. About 2 million. About
2 a million -- because COFS was using this escrowed funds, which
3 was supposed to be used to buy sand from Bates; COFS were
4 using those funds to buy sand around Bates directly from
5 suppliers.

6 THE COURT: Okay. Well, with sort of that
7 understanding or lack of understanding, at least on my part, I
8 mean, I guess it is your motion, Mr. Jefferson. I mean, I
9 don't know where you all want to begin.

10 MR. JEFFERSON: Yes, Your Honor. If I could -- I
11 think the Court's opening is interesting, and this is the
12 first time we have heard this.

13 As the Court knows, this is our application for
14 preliminary injunction consistent with the temporary
15 restraining order requiring that Mr. Naumann account for the
16 funds that have been deposited into his possession.

17 We for months were attempting to get that
18 information, unsuccessfully, ultimately filing this amended
19 counterclaim in this Court that resulted in this Court
20 entering an order that says ELC and Naumann immediately
21 provide a detailed accounting of all funds that have come into
22 the possession of ELC through the escrow agreement dated
23 April 14, 2017, including bank statements, et cetera. We have
24 received nothing.

25 THE COURT: So my questions was the first time you

1 have heard this?

2 MR. JEFFERSON: Those are the first numbers -- and
3 these are my clients. The first time Janis Kline, the first
4 time Perry Taylor has heard this, that their customer, Pro
5 Petro, their only client is -- they will now have to deliver
6 the news to them that the money that they have been
7 representing is in this account is not there, because Mr.
8 Naumann somehow has spent those funds without their knowledge
9 and in spite of repeated requests for information.

10 There has been no documentation whatsoever to
11 support any withdrawal of funds from that escrow account, and
12 there has been no accounting from Mr. Naumann for the moneys
13 that were in his possession, in spite of this Court's order
14 and in spite of many requests from our clients in the past few
15 months.

16 We are at a loss. And the information that we are
17 getting from Ms. Hyman right now, we have gotten a lot of
18 information from Mr. Bates, from Mr. Naumann that has turned
19 out to not be true, and so we are very suspicious about what
20 has happened with these funds, and until we have a complete
21 accounting, which this Court has already ordered, we are not
22 going to know, and we are not going to know whether there are
23 funds out there that are traceable, that we can get to, and it
24 sounds like because these funds have been expended that we
25 need to move quickly to try to figure out where they are and

1 figure out whether any of this is salvageable.

2 THE COURT: What is your understanding of Amegy?
3 What is going on there? I thought we were only dealing with
4 ELC. I had no idea until I just heard something that we were
5 dealing with Amegy.

6 Are we dealing with Amegy here, or what is going on?

7 MR. JEFFERSON: The Court's order, the temporary
8 restraining order recounted the facts, I think, very well.
9 There is an Amegy account. There were two accounts. There
10 was an Amegy account. There was an ELC account.

11 When sand was not delivered, the parties agreed that
12 COFS, my client -- I will refer to them as COFS -- could
13 procure that sand from someone who could deliver the sand, not
14 Mr. Bates, but somebody else.

15 That sand was procured from a mine called CSI. And
16 as sand was delivered from CSI, it was accounted for in this
17 same escrow arrangement. Mr. Bates agreed to that. He agreed
18 that a million dollars could be spent from the Amegy account,
19 that he had no access to, to procure sand.

20 And so we do have statements from Amegy, we have
21 monthly statements that show exactly how much money went in,
22 how much money went out, and every time a delivery went to
23 CSI, a deposit was made back into the ELC account, so that had
24 an evergreen \$1 million number established.

25 THE COURT: Okay. With regard to the accounting,

1 what, if any, documents does your client have about the
2 withdrawals of the \$1 million in the ELC account?

3 MR. JEFFERSON: Zero.

4 THE COURT: Even before all of the fights began, you
5 never received statements?

6 MR. JEFFERSON: There were -- that is correct.
7 Ms. Kline requested on numerous occasions from Mr. Naumann
8 statements, saying: We need statements. We need to assure
9 our client how much -- confirm the balance in these accounts.

10 There have been no statements. There was an initial
11 statement provided by Mr. Naumann when the deposit was made.
12 It shows a \$1 million deposit. And then we know after that
13 that \$40,000 was withdrawn on the signature of Mr. Bates and
14 with Mr. Naumann's concurrence for a supposed delivery of sand
15 that still has not happened. That's the extent of the
16 documentation that we have.

17 THE COURT: So, Ms. Hyman, what documents, if any,
18 do you have today?

19 MS. HYMAN: Your Honor, my client has put together
20 an accounting spreadsheet and then I have the documents to
21 support it.

22 THE COURT: And have you given those to Mr.
23 Jefferson?

24 MS. HYMAN: No. I offered, like I said, to work
25 this out without needing to bother the Court and he declined,

1 so I have them here today.

2 THE COURT: I mean, I ordered documents to be
3 produced. Why did he have to reach some kind of agreement
4 with you?

5 MS. HYMAN: Well, I didn't have them until
6 yesterday -- I didn't have them all put together until
7 yesterday. This is something that my client has had to go
8 back and reconstruct.

9 THE COURT: I am a little concerned about that. I
10 mean, what kind of company is Equity Liaison that they have to
11 recreate statements after the fact? Aren't statements
12 generated when transactions occur?

13 MS. HYMAN: Not the statements -- well, I am not
14 sure -- there are bank statements -- this money -- there are
15 bank statements. He didn't have to create those. But the
16 accounting is a spreadsheet, and he had to go and pull the
17 documents to support the numbers in the spreadsheet.

18 THE COURT: I am not sure I understand that either,
19 but -- well, for purposes of this hearing, I mean, I guess we
20 can muddle through, Mr. Jefferson, or, you know, have her
21 deliver to you what documents she has in her hands right now,
22 we take a recess, you all review it, and if you are ready to
23 call a witness, we can do it that way, or we can just proceed
24 now. I don't care.

25 MR. JEFFERSON: I am fine with proceeding now, just

1 calling a witness, Your Honor. And whenever she is ready to
2 deliver the documents to me, I will take a look at them.

3 THE COURT: Well, she is ready now, because I order
4 it now.

5 So hand over the documents.

6 (Documents handed to Mr. Jefferson.)

7 THE COURT: Your first witness, Mr. Jefferson.

8 MR. JEFFERSON: I will call Janis Kline, Your
9 Honor.

10 (Oath administered to the witness.)

11 COURTROOM DEPUTY: Thank you.

12 *_**_*_*_*_*_*_*_*_*

13 DIRECT EXAMINATION

14 BY MR. JEFFERSON:

15 Q. Would you state your name, please, for the record.

16 A. Janis Kline.

17 Q. And, Ms. Kline, how are you related to COFS, Complete Oil
18 Field Services?

19 A. One of the owners and the CFO.

20 Q. And can you give the Court just a very quick background of
21 your professional life as an adult?

22 A. Sure. I am a CPA. I graduated from the University of
23 Utah. I went to school -- I mean, I went to work for a firm
24 that was predecessor of KPMG as an auditor, was there for 12
25 years, left as a senior audit manager.

1 Q. And about what year are we now?

2 A. Mid eighties.

3 Q. Okay.

4 A. And then went to work as CFO of a restaurant company.

5 Q. What was the name of the company?

6 A. Teratron.

7 Q. And what kind of restaurants?

8 A. We had Hardy's Restaurants. There were 80 of them
9 throughout seven states.

10 Q. Okay. You were the CFO?

11 A. Yes.

12 Q. Okay.

13 A. Then we had a real estate division, and I worked with the
14 real estate and then left. Only did that part-time, left.
15 Went to work with another CPA firm, a local firm called
16 Pinnock, Robbins, Posey & Richins, where I was a partner, and
17 ended up being --

18 THE COURT: I don't mean to be disrespectful, but I
19 don't need this.

20 MR. JEFFERSON: Okay.

21 THE WITNESS: Okay.

22 MR. JEFFERSON: Very good.

23 BY MR. JEFFERSON:

24 Q. Now, Ms. Kline, can you explain just the relationship
25 between -- the Court is familiar with the background facts.

1 Can you explain the relationship between the Amegy
2 escrow account and the ELC escrow account as it pertains to
3 this case?

4 A. Yes. The Amegy account was to hold the majority of the
5 funds. The ELC account was the disbursing escrow account.

6 Q. And why was there -- why were there two accounts, to begin
7 with?

8 A. There were two accounts because we were concerned about
9 the close relationship of Mr. Naumann with Bates Energy.

10 Q. And why did you suspect there was a relationship there?

11 A. Because we saw that he had done -- he was doing a lot
12 of -- they were just too cozy, and the relation -- Bates
13 absolutely insisted that we use that firm, that we use ELC,
14 and he wanted all 4 million in there.

15 And we said, no, we wouldn't do it. We needed to
16 have a bank that was a fiduciary, governed by regulators and
17 we would put the bulk of the money in that and the 3 million
18 in that fund.

19 It was our -- because of the anticipated amount of
20 sand that was supposed to be purchased, we had a million
21 dollars in ELC. We anticipated that we would blow through
22 that million dollars very quickly, because Mr. Bates had
23 represented that he had hundreds of thousands of tons of sand
24 that he could get his hands on quickly.

25 Q. And so the ELC account, you said that Mr. Bates insisted

1 on that company being the escrow agent?

2 A. Yes. He said he knows how to handle these transactions.
3 A bank won't know how to do it. And he made a great big deal
4 about it.

5 Q. And initially, was there discussion that there would just
6 be one escrow account and that that would be with ELC?

7 A. Yes.

8 Q. And what happened with that discussion?

9 A. We said we wouldn't do it.

10 Q. Did you attempt to do due diligence on ELC to determine
11 what its credentials were?

12 A. We did.

13 Q. And what did you find?

14 A. Not much.

15 Q. Is it subject -- is that company subject to licensing
16 requirements in the state of Texas, to your knowledge?

17 A. Well, I actually talked to Dewayne about that beforehand
18 and he represented himself as a fiduciary. He represented
19 himself as -- that he did audits, fraud audits, and in
20 addition to that that he was -- he didn't say he was licensed.
21 He said he didn't have to be licensed, but the way he talked,
22 it was as if he were -- since he was a fiduciary -- and, quite
23 frankly, we needed to get the sand quickly, and this was the
24 only way we were going to be able to do it and we anticipated
25 that the million dollars would not stay there long.

1 Q. Why did you need to get the sand quickly?

2 A. Because Mr. Bates was constantly calling us and saying: I
3 have trains of sand. They are ready to go. You need to fund
4 the escrow. I have expenses to pay. You need to fund the
5 escrow. And it was a barrage of communication like that, and
6 our customer needed the sand and they needed it right away.

7 Q. Who was the customer?

8 A. The customer was Pro Petro.

9 Q. What kind of company is Pro Petro?

10 A. It is a pressure pumping company.

11 Q. And why does it need sand?

12 A. Because that is its business, pump sand down into the
13 fracs.

14 Q. And are we talking about the fracking oil and gas
15 industry --

16 A. Yes.

17 Q. -- that we have been reading so much about in the news?

18 A. Yes.

19 Q. All right. So the -- let me -- this is the ELC escrow
20 agreement.

21 MR. JEFFERSON: Your Honor, and I know that the
22 Court is familiar with these documents, so I don't know the
23 extent to which you want to go through each one of them, but I
24 am going to -- I intended to mark at least the escrow
25 agreement, the ELC escrow agreement, and the memorandum of

1 understanding that governs the relationship of the parties.

2 THE COURT: Yes. Go ahead and use them as exhibits
3 here, just so we have a record, and then you can hit just the
4 salient points, how disbursements were supposed to take place,
5 those kinds of things.

6 MR. JEFFERSON: Okay. Very good.

7 If I may approach, Your Honor --

8 THE COURT: Yes.

9 MR. JEFFERSON: -- I will ask that these be marked
10 as Plaintiff's 1 and 2 -- or Defendant's or Counter-defendant.

11 THE COURT: Why don't you just say COFS.

12 MR. JEFFERSON: COFS.

13 MS. HYMAN: Do you have copies for me?

14 MR. JEFFERSON: I do have copies for you, actually.

15 MS. HYMAN: Thank you.

16 MR. JEFFERSON: If I may approach the witness.

17 BY MR. JEFFERSON:

18 Q. Can you identify, Ms. Kline, the documents that I have
19 handed you that are marked Defendant's 1 and 2?

20 A. Yes. The memorandum of understanding and the ELC escrow
21 agreement.

22 THE COURT: And just to make sure we know which memo
23 of understanding we are talking about, what is -- there are
24 two, so which date is this?

25 THE WITNESS: The April 13th.

1 MR. JEFFERSON: Your Honor, we offer 1 and 2.

2 THE COURT: Any objection to 1 and 2?

3 MS. HYMAN: No objection, Your Honor, but if I could
4 just clarify which one is 1 and which one is 2.

5 THE COURT: 1, I believe, is the memo of
6 understanding.

7 Correct?

8 THE WITNESS: Correct.

9 BY MR. JEFFERSON:

10 Q. Now, Ms. Kline, first of all, with respect to the
11 memorandum of understanding, if you turn to the last page that
12 is on Exhibit 1, there are signatures, correct?

13 A. Yes.

14 Q. And there is a date as well?

15 A. Yes.

16 Q. Did all parties sign this agreement?

17 A. Yes.

18 Q. And what is the date, the signature of the COFS
19 representative?

20 A. April 13, 2017.

21 Q. And the date of the signature of the Bates representative?

22 A. April 12, 2017.

23 Q. And very briefly, there has been some confusion because
24 there is another MOU that has a date of April 18, 2017. You
25 have seen that?

1 A. I have.

2 Q. Is that signed by COFS?

3 A. No, it is not.

4 Q. Was there ever an April 8 -- or an MOU dated April 18 that
5 was signed by COFS?

6 A. No.

7 Q. Was there ever an MOU signed after the escrow agreement
8 was set up?

9 A. No.

10 Q. Okay. So if we look at the escrow agreement, which is
11 Exhibit 2, what is the date of the signatures on the escrow
12 agreement?

13 A. April 14.

14 Q. Okay. And so if there is an April 18th memorandum of
15 understanding, that would not have been signed by you -- there
16 was no other memorandum of understanding signed after the
17 escrow agreement was set up, was there?

18 A. No, there was not.

19 Q. Okay. Now, let's -- so there are kind of two points in
20 time I want to talk about: First, shortly after the escrow
21 agreement was signed, what you expected to happen then, and
22 then we are going to talk about, in a minute, what happened
23 with the CSI transactions. Okay?

24 A. Okay.

25 Q. So first of all, when this escrow agreement was signed and

1 the memorandum of understanding was entered into, what did you
2 expect to happen with respect to the flow of funds?

3 A. What was set up was when Mr. Bates would send us a request
4 for funds to pay for sand, that request would be accompanied
5 by a bill of lading as evidence, and that is the normal
6 protocol for any transaction that includes transportation and
7 product.

8 Q. Why is a bill of lading important in that transaction?

9 A. A bill of lading tells you what is the product, where did
10 it come from, how many pounds or tons, and where is it going
11 to and who the owner is.

12 Q. All right. So let's back up for just a minute. So the
13 sand is acquired in a mine in some location; is that right?

14 A. Yes.

15 Q. And in this case, where was the sand supposed to be
16 acquired from?

17 A. It was all supposed to northern white, so it would have
18 been acquired in Wisconsin, primarily.

19 Q. Okay. And how would the sand make its way from Wisconsin
20 to wherever Pro Petro needed it?

21 A. It would go by rail.

22 Q. And who would be -- who was responsible for ensuring that
23 the sand got put on the railcars and was shipped as
24 represented?

25 A. Bates Energy was responsible to have the cars loaded and

1 have them arrive in one of the listed rail terminals in the
2 Midland-Odessa area, and then they were to be -- and they were
3 supposed to handle it clear to the transload, until it was
4 transloaded off from the railcars into the trucks.

5 Q. Okay. So the term "transload" simply means either the
6 loading or unloading of a car?

7 A. Yes.

8 Q. Is it just loading or is it -- is it just unloading or
9 does it include loading --

10 A. It can include loading as well.

11 Q. Okay. So at the mine, there may be some transloading
12 fees, then the rails make its way to Texas, it gets
13 off-loaded, and it is in Pro Petro's, your customer's
14 possession at that point?

15 A. It is in our customer's possession at the point it is
16 off-loaded into the truck of whatever trucking company they
17 have designated to pick it up.

18 Q. Okay. So when in this transaction is money supposed to be
19 disbursed from the escrow account?

20 A. Fifty percent was to be disbursed upon the train leaving
21 and the evidence, and the other 50 percent was to be
22 disbursed, and it was in a series of transactions based upon
23 when the product was transloaded off the railcar into the
24 truck, and it would be billed on the BOL amount for what went
25 into the truck, if that makes sense.

1 Q. Okay. And are those payment terms, are they reflected in
2 the memorandum of understanding?

3 A. Yes.

4 Q. So when the loading occurs -- well, at what point in this
5 process is a bill of lading generated?

6 A. There is a bill of lading generated for the train as it is
7 getting ready to leave the station. It cannot leave --

8 Q. Which station?

9 A. In Wisconsin or, in this case, Minnesota.

10 Q. Okay.

11 A. It cannot leave the train station without a bill of lading
12 representing cargo.

13 Q. And when a bill of lading is issued, who gets it?

14 A. The party that starts the process gets it, and then
15 normally when we buy product, then we get a copy of it
16 immediately.

17 Q. Okay. In this case, how was it supposed to work? Who
18 should have had a bill of lading assigned to them when the
19 sand was being picked up at a mine in Wisconsin or Minnesota,
20 as you say?

21 A. Bates Energy.

22 Q. Okay. Now, so the way it was supposed to work was Bates
23 would procure the sand somehow in Wisconsin or Minnesota?

24 A. Correct.

25 Q. It would then, by procuring the sand, they would be issued

1 a bill of lading?

2 A. Correct.

3 Q. And provide that to you?

4 A. Yes.

5 Q. And then at that point, you would pay half of the amount
6 due?

7 A. Correct. They would also give us an invoice and we would
8 pay half.

9 Q. Okay. They would give you the invoice with the bill of
10 lading and you would pay half. And then what would happen?

11 A. Then the train would go to the Midland-Odessa area, and
12 then they were supposed to coordinate with us and -- well,
13 they coordinated with us and Pro Petro's group and we would
14 get -- Pro Petro would send trucks and pick it up.

15 Q. Okay. And when was the next payment?

16 A. At the point that the trucks were picking up the product.

17 Q. And what documentation would you get at that point to show
18 that it was picked up?

19 A. Bill of ladings for the trucks.

20 Q. So different bills of lading --

21 A. Correct.

22 Q. -- that show now the sand has transferred possession?

23 A. Correct.

24 Q. Okay. When was the first time, Ms. Kline, that COFS
25 received any bills of lading from Bates Energy?

1 A. July 12.

2 Q. July 12 of 2017?

3 A. Yes.

4 Q. And how much sand was supposed to be delivered between
5 April 14 of 2017, the date -- April 13, 2017, the date of the
6 memorandum of understanding, and July 12, 2017?

7 A. 80,000 tons.

8 Q. 80,000 tons of sand was supposed to be delivered by what
9 date?

10 A. It was by 90 days of execution of this MOU, so it would
11 have been -- I am thinking it was July. I would have to
12 calculate it.

13 Q. April, May, June, July, ninety days?

14 A. Yes.

15 Q. So April 13 or thereabout, by then, 80,000 tons of sand
16 was to have been delivered?

17 A. July 13.

18 Q. Did I say -- April, May, June, July. So by July 13 --

19 A. Correct.

20 Q. -- 80,000 tons was to have been delivered? How much was
21 delivered?

22 A. None.

23 Q. All right. And around July 12, you got some bills of
24 lading from Mr. Bates?

25 A. Yes.

1 Q. And do you remember what the bills of lading contained?

2 A. It was seven cars and there was some 40-70 and some 100
3 mesh. I think there was only one railcar of 100 mesh.

4 Q. Okay. And did you authorize payment on those bills of
5 lading?

6 A. Yes.

7 Q. How much was due at that time?

8 A. \$39,190-something, as I remember.

9 Q. Okay. All right. Did you ever authorize any additional
10 payments out of the ELC escrow account?

11 A. Yes. We authorized some to CSI, no other payments to
12 Bates.

13 Q. Okay.

14 THE COURT: How much to CSI?

15 THE WITNESS: That was the million dollars that we
16 spoke of earlier that was approved.

17 BY MR. JEFFERSON:

18 Q. Okay. So let's talk about that million dollars for a
19 second. So when -- can you just explain to the Court whether
20 the schedule under the MOU was met? So there were supposed to
21 be deliveries of sand within certain periods of time. Was
22 that schedule met?

23 A. No.

24 Q. And did you have discussions with anybody about what to do
25 with that, with respect to that situation?

1 A. In what regard?

2 Q. How would sand get to your customer? In other words, what
3 were you going to do about the fact --

4 A. Oh. We were --

5 Q. -- that Mr. Bates was not delivering sand?

6 A. Yes. There had been -- I personally did not have those
7 discussions. Sam Taylor did.

8 Q. Okay. And was an accommodation reached as a result of
9 those discussions?

10 A. Yes.

11 Q. What was the accommodation?

12 A. That we received a letter from Mr. Bates authorizing us,
13 and an e-mail authorizing us to -- that we could expend up to
14 a million dollars with CSI La Prairie to acquire 40-70 sand.

15 Q. Okay. And so you have got an Amegy escrow account. You
16 have an ELC escrow account. What would happen with those
17 accounts and how would that sand get purchased?

18 A. Originally, it was supposed to go direct out of Amegy.

19 Q. And when you say "it," the money was supposed to go
20 directly from Amegy to the mine?

21 A. Yes.

22 Q. Okay.

23 A. And so we prepared documents to that effect to have it go
24 direct to the mine. Now, Dewayne had to -- Dewayne Naumann
25 had to sign off on any transfers out of Amegy.

1 Q. Okay. Explain why that is the case. Why did Mr. Naumann
2 have to sign off on transfers out of Amegy?

3 A. Because the Amegy escrow agreement had two parties. It
4 had Dewayne Naumann and ELC and Complete Oil Field Services,
5 and the signatories were Dewayne and myself, myself for COFS.

6 Q. All right. So let's just keep the parties straight.
7 Mr. Naumann and ELC had an escrow account where they were the
8 escrow agent, correct?

9 A. Correct.

10 Q. And as the escrow agent, they were bound to instructions
11 from you and Mr. Bates?

12 A. Correct.

13 Q. Then there is an Amegy escrow account. Who is the escrow
14 agent on the Amegy escrow account?

15 A. It is Amegy Bank.

16 Q. And who were the instructors? Who were the parties to
17 give Amegy instruction, agree to instruction about the
18 disbursement Of funds?

19 A. Dewayne Naumann as representative of ELC and myself as
20 representative of COFS.

21 Q. So Mr. Naumann, on one hand, is an escrow agent; on the
22 other hand, he is a pay agent for Bates Energy?

23 A. Correct.

24 MS. HYMAN: Objection, Your Honor. Could we keep
25 track of when we are talking about ELC, the company, and when

1 we are talking about Mr. Naumann as an individual?

2 MR. JEFFERSON: And I am using the term
3 synonymously. He is the only member of the company.

4 THE COURT: Well, I mean, how were the documents
5 drafted; do you know? I mean, was he acting in some kind of
6 individual capacity when he was acting as an agent for Bates?

7 THE WITNESS: It is my understanding that he was
8 acting as an agent of ELC, but that would be -- you guys would
9 have to tell me.

10 MR. JEFFERSON: Your Honor, the escrow agreement,
11 Exhibit No. 2, reflects that Mr. Naumann is the principal and
12 he is the one to provide instruction to the escrow agent, and
13 I will just --

14 THE COURT: Well, I will just keep that distinction
15 in mind as I am looking through this. Go ahead.

16 MR. JEFFERSON: Thank you, Your Honor.

17 BY MR. JEFFERSON:

18 Q. Okay. So with respect to the Amegy account and the CSI
19 purchases, again, ELC and Complete Oil Field Services were to
20 provide instruction to Amegy?

21 A. Correct.

22 Q. Okay. And did that happen?

23 A. Yes.

24 Q. And --

25 THE COURT: Well, I mean, I don't mean to cut this

1 short, but to make sure I understand COFS's position, I mean,
2 are you all alleging that there is some kind of improper
3 shortage in the current Amegy account, or is the Amegy account
4 all proper?

5 THE WITNESS: The Amegy account is proper, and we
6 have full accounting on our end and on Amegy's end.

7 THE COURT: Okay. So, then, let me make sure I
8 understand what is going on, then, with the ELC account.

9 You authorized payment of about \$40,000, give or
10 take, for seven cars back on July 12. Did that instance
11 follow your protocol of 50 percent at the train leaving
12 Minnesota and 50 percent at the truck loading in
13 Midland-Odessa?

14 THE WITNESS: Yes.

15 THE COURT: And so -- and was it the sand you
16 expected?

17 THE WITNESS: It was -- we agreed to take that
18 sand --

19 THE COURT: Okay. So --

20 THE WITNESS: -- if that is how you are asking.

21 THE COURT: Yes. That's fine. I thought your memo
22 of understanding specified a typical -- a specific type of
23 sand, so --

24 THE WITNESS: It did. That train had 40-70 on it
25 and 100 mesh, all northern white, so it was --

1 THE COURT: So it met your specifications?

2 THE WITNESS: Yes.

3 THE COURT: Okay. After July 12, did Bates ever
4 supply you any more sand?

5 THE WITNESS: No. And he never supplied that
6 either.

7 THE COURT: He didn't supply the 40,000?

8 THE WITNESS: No.

9 THE COURT: Who supplied that?

10 THE WITNESS: Well, he was supposed to supply it,
11 and then they filed the TRO right after -- it was supposed to
12 arrive in Odessa on the 23rd of July. There was a TRO filed
13 on the 20th. We tried to find out where the sand was, and no
14 one would tell us. He never billed us for the other half of
15 the hand. There was zero communication on their end.

16 We -- Mr. Jefferson sent a letter to his attorney,
17 Ms. Clausewitz, asking where this sand was and we would pick
18 it up. In the hearing that we had on the 3rd or 4th of
19 August, we indicated that we would gladly pick up that sand
20 and buy it, but we heard zero. We don't really know where it
21 is at.

22 THE COURT: So these allegations that we heard
23 earlier in the state court and then the representations made
24 this morning about \$204,226.97 receivable and all of this
25 other stuff, I mean, where is that coming from?

1 THE WITNESS: I have no idea. We have not received
2 one grain of sand from Bates.

3 THE COURT: Have you ever rejected any sand that
4 Bates has actually put on a car?

5 THE WITNESS: Not to my knowledge.

6 THE COURT: Go ahead.

7 BY MR. JEFFERSON:

8 Q. Can you explain why that is not to your knowledge?

9 A. Because Sam Taylor, my partner, was the one that dealt
10 with the sand acquisition.

11 Q. All right. But what --

12 THE COURT: So is Mr. Taylor here?

13 MR. JEFFERSON: Mr. Sam Taylor is not here.
14 Mr. Perry Taylor, his brother, is here.

15 THE COURT: Well, I mean, I am trying to figure out
16 whether an accounting is correct here. I mean, how am I going
17 to get there?

18 MR. JEFFERSON: Your Honor, I think an accounting is
19 perfectly correct here, as Mr. Naumann certainly, as an escrow
20 agent, has the fiduciary obligations of an escrow agent.

21 THE COURT: Well, I am trying to figure out whether
22 or not any of these other disbursements are proper or
23 improper.

24 MR. JEFFERSON: Well, that's --

25 THE COURT: So what did Sam Taylor say? And isn't

1 that going to implicate whether it is proper or improper?

2 THE WITNESS: We never -- we never agreed -- we
3 never got BOLs for sand, other than one attempt on June 9th,
4 that I am aware of, and that was a disaster because it was in
5 the wrong names and we could not prove ownership.

6 And just so you are aware, in the Midland area,
7 there have been a number of frauds around ownership issues on
8 BOLs, so we were being very cautious.

9 THE COURT: So this June 9 BOL, that predated the
10 July 12 successful seven-car delivery?

11 THE WITNESS: Right.

12 THE COURT: Okay.

13 THE WITNESS: Yes. But that was already sitting in
14 Midland. They didn't load those cars for us. It was already
15 in Midland and there was a question as to ownership.

16 THE COURT: So this June 9 attempt, I mean, you
17 received a BOL from who?

18 THE WITNESS: I don't think we ever received any
19 BOLs, actually.

20 THE COURT: So how did you know there was sand
21 waiting for you at the Midland train station?

22 THE WITNESS: It was a conversation between Sam and
23 them. I wasn't a part of that, sir.

24 THE COURT: Did Sam, to your knowledge accept
25 this --

1 THE WITNESS: No.

2 THE COURT: -- train delivery on June 9?

3 THE WITNESS: No.

4 THE COURT: Do you know what, if anything, happened
5 to the sand? Was it returned? Did somebody else buy it or --

6 THE WITNESS: I don't know. In the hearing, it was
7 represented by Mr. Bravo that --

8 THE COURT: That is -- refresh me, who is he?

9 THE WITNESS: Mr. Bravo is one of the Bates Energy
10 parties.

11 THE COURT: Okay.

12 THE WITNESS: He represented -- and I think
13 Mr. Howard, Austin Howard also, the way they talked about it,
14 they said, it is like one of them said, used the term: It is
15 like bread on a shelf. If it is in Midland, Texas, you can
16 sell that sand and it will be gone, especially when you are
17 talking 40-70.

18 THE COURT: Go ahead.

19 BY MR. JEFFERSON:

20 Q. Okay. Ms. Kline, did you receive any statements from
21 Mr. Naumann with respect to what was going on with the funds
22 that were in his possession?

23 A. No.

24 Q. Did you ask for statements from Mr. Naumann about that?

25 A. Multiple times.

1 Q. Did you receive any statements from Amegy Bank with
2 respect to what was going on with the Amegy escrow account?

3 A. Yes. Every month.

4 MR. JEFFERSON: Your Honor, if I may approach.

5 THE COURT: Yes.

6 BY MR. JEFFERSON:

7 Q. Let me hand you, Ms. Kline, what has been marked as
8 Defendant's Exhibit 3.

9 Can you identify what Defendant's Exhibit 3 is
10 without talking about the contents yet?

11 A. It is bank statements from Amegy Bank on the escrow
12 account.

13 Q. On the escrow account we have been talking about in this
14 case?

15 A. Yes.

16 MR. JEFFERSON: Your Honor, I would offer
17 Defendant's 3.

18 THE COURT: Any objection?

19 MS. HYMAN: No objection, Your Honor.

20 THE COURT: 3 is also admitted.

21 BY MR. JEFFERSON:

22 Q. Now, Ms. Kline, let's go through here and have you explain
23 what is going on with the transfer of funds in the Amegy Bank
24 escrow account. The first statement is on the -- I guess it
25 would be the third page of the exhibit, actually, beginning on

1 the second page of the exhibit.

2 And are there dates on that statement?

3 A. Yes.

4 Q. And what are the dates?

5 A. April 19th and April 21st.

6 Q. And you are talking about transactions from the statement?

7 A. Yes.

8 Q. What time period does the statement cover?

9 A. April 1st through April 30th.

10 Q. Okay. And what does it show happened in that time period
11 on this statement in the Amegy escrow account?

12 A. On April 19, there was a deposit for \$3 million, which was
13 a wire in from Pro Petro. April 21st, there is a deposit of
14 \$4,000. That was a payment by us to pay the escrow fees.

15 Q. Okay. So Complete Oil Field Services paid the escrow fees
16 separately. Pro Petro supplied the \$3 million to fund it?

17 A. Correct.

18 Q. Were there any transactions in the month of May?

19 A. Also on April 21st, but it shows to pay out of the escrow
20 fees of 4,000 to Amegy Bank.

21 Q. Okay. So Complete Oil Field paid the funds into the
22 escrow account. Amegy Bank then took the funds out. That was
23 all accounted for?

24 A. Correct.

25 Q. Okay. Were there any transactions in the month of May?

1 A. The only transaction was accrued income.

2 Q. Okay. And is that reflected on the statement?

3 A. Yes.

4 Q. Were there any transactions in the month of June?

5 A. Yes. There was a payment for \$96,804.43, and it was paid
6 to Equity Liaison Company.

7 Q. It was paid to ELC?

8 A. Yes.

9 Q. Mr. Naumann's company?

10 A. Yes.

11 Q. And explain why it is that money would be paid from the
12 Amegy escrow account to the ELC escrow account.

13 A. Because when we entered the arrangement with CSI, as I
14 mentioned earlier, our first draw to pay CSI, we tried to pay
15 it direct out of Amegy Bank. Mr. Naumann had to sign and
16 execute that, as well as us. He didn't sign it. Instead, he
17 called and he was very angry and was upset at me for having it
18 go direct.

19 And I said to him: On the letter, it says it is
20 supposed to go direct, so that's the way I have got it going.
21 And he was very adamant that that was not how it was going to
22 go, that everything needed to go through him.

23 Q. Okay.

24 A. So we were -- talked on the phone for quite a while and
25 went the rounds, and I needed CSI to get paid, because that

1 train was leaving the station.

2 Q. So sand was on its way from the mine to Pro Petro and they
3 needed to get paid?

4 A. Yes.

5 Q. Okay.

6 A. So I said: Fine. Then what we will do, the requirement
7 is that ELC's escrow account stays at the million dollars, so
8 what we will do is we will transfer funds from Amegy Bank to
9 ELC, then ELC can make payment to CSI.

10 Q. Okay. And did that happen?

11 A. That did happen, and that's the way it happened for every
12 transaction. Mr. Naumann had copies of all of the
13 documentation, the BOL and the invoice from CSI. He would
14 audit them and approve them and then he would do the wire to
15 CSI, and we entered documentation so that that wire would be
16 reimbursed from Amegy.

17 THE COURT: Let me stop you here. This June
18 statement you are looking at, the withdrawal of \$96,804.43 to
19 ELC, what date in June did that take place?

20 THE WITNESS: That was June 30th.

21 THE COURT: Can you go to the documents that
22 Ms. Hyman gave you, that spreadsheet that her client prepared?
23 Does it indicate a deposit on June 30 in that amount?

24 MR. JEFFERSON: Yes. There is a 96 -- this first
25 sheet is a spreadsheet that shows a \$96,804 reimbursement from

1 Amegy.

2 THE COURT: Okay.

3 MR. JEFFERSON: So there is a list of reimbursements
4 from Amegy listed -- and this is the first time I have seen
5 this -- listed on this page.

6 THE COURT: Okay. Go ahead.

7 BY MR. JEFFERSON:

8 Q. If you continue through the Amegy Bank statements,
9 statements of account, in July, were there additional
10 transactions?

11 A. Yes.

12 Q. And can you -- there are not very many of them. Can you
13 run through what the transactions were?

14 A. Yes. They are all the same as the CSI -- to CSI with the
15 same scenario. One, July 6, \$87,037.80.

16 July 11, \$25,171.15.

17 July 13, \$89,616.64.

18 July 13, another one, \$110,480.13.

19 July 18, \$265,302.18.

20 Then in addition to that, there is a deposit for
21 investment income of \$1,209.99.

22 Q. Okay. And so if you go through the rest of the Amegy
23 statement, does it show -- I guess there is only one other
24 statement. That is the August statement, correct?

25 A. Correct.

1 Q. And were there additional transactions in August?

2 A. Yes. The TRO was lifted at the first part of August. I
3 think it was like the 7th.

4 Q. Okay.

5 A. And so after that, we requested two disbursements to pay
6 CSI. One was August 9th for \$122,712.88. Another one was
7 August 9th for \$187,629.33. And that took it to just under a
8 million dollars, and we did no more because our limit was a
9 million dollars.

10 Q. So all of the transactions regarding the Amegy Bank, or
11 the Amegy escrow account, are they all reflected on the
12 statements that is Defendant's Exhibit 3?

13 A. Yes.

14 Q. And you received no statements with respect to the ELC
15 account, correct?

16 A. Correct.

17 MR. JEFFERSON: If I may approach, Your Honor.

18 THE COURT: Yes.

19 BY MR. JEFFERSON:

20 Q. Ms. Kline, I am going to hand you what has been marked as
21 Defendant's Exhibit 4. Can you just identify what Defendant's
22 Exhibit 4 is?

23 A. It is an e-mail dated July 28 -- well, it's a couple --
24 28th, 25th, between Dewayne Naumann and myself.

25 Q. Okay. And what is the subject of the e-mail on the 25th?

1 A. On the 25th --

2 Q. What are you asking for?

3 A. I am asking him if you could please send me a statement so
4 I can confirm balances tomorrow.

5 Q. So --

6 A. And mentioned that the TRO was lifted.

7 Q. You were asking for copies of statements?

8 A. Yes.

9 Q. And what did Mr. Naumann respond?

10 A. He has been traveling. He would be back in the office on
11 Monday. Considering the legal circumstances we are all
12 under -- all under -- I assume that is supposed to be -- at
13 the current time, I will have to consult and seek the advice
14 of legal counsel as well. This is not something I took into
15 consideration when this relationship began.

16 Q. Okay. So now, July 28, by that time, there is a TRO that
17 Mr. Bates has obtained, correct?

18 A. Yes.

19 Q. And you are asking Mr. Naumann for a statement regarding
20 the ELC escrow account, the account that he managed?

21 A. Yes. And then he went on in this e-mail and said:
22 Generally speaking, company policy has always been to do a
23 reconciliation for year-end only.

24 Q. Go a little slower.

25 A. Oh. A reconciliation for year-end only. In the case of a

1 special reconciliation, our policy is to give ourselves a
2 minimum of 30 days to respond to the request. I cannot drop
3 everything at one time and simply focus on a singular account
4 and let all others languish. With that said, I will begin the
5 process of compiling the data to prepare the reconciliation
6 requested, seeking guidance from counsel.

7 Q. And that was dated July 28th of 2017?

8 A. Yes.

9 Q. And have you received any substantive statement before
10 today regarding the accounting, a statement or a detailed
11 accounting --

12 A. I received nothing.

13 Q. Okay. And did you follow up that request with other
14 requests?

15 A. Yes. Multiple e-mails and texts.

16 Q. Did you talk --

17 A. I called.

18 Q. -- to Mr. Naumann by phone?

19 A. I tried to, and I left messages. And then later, as I was
20 calling, it would just ring and ring and ring and ring.

21 Q. Okay. How would Mr. Naumann -- how could Mr. Naumann be
22 expected to respond and provide a statement of account for his
23 escrow account when there is this Amegy account that is also
24 out there doing other -- performing other functions?

25 A. Well, it is like any other account that you have. I have

1 never had an escrow account that they don't give you automatic
2 statements, monthly statements, and it shows everything that
3 is listed, and if there is any support that you don't have,
4 they provide the support.

5 Q. So what would you have expected -- if Mr. Naumann were to
6 have provided you -- if Mr. Naumann would have responded to
7 this request on July 28 and provided you with a detailed
8 accounting of all of the input and output of the ELC escrow
9 account, what would you have expected to see?

10 A. I would have expected to see a balance of 960,000 and
11 change, and I would have expected to only see the transactions
12 that were CSI transactions, and the one Bates transaction.

13 MR. JEFFERSON: If I may approach, Your Honor.

14 THE COURT: Yes.

15 BY MR. JEFFERSON:

16 Q. I am going to hand you, Ms. Kline, a series of e-mail
17 exchanges between the dates of July 25 and August 14.

18 Can you take a moment and look and identify that
19 exchange?

20 A. It is multiple requests asking for the statement, and then
21 there is the request for a disbursement, but the biggest piece
22 is: Where is our statement? Where is our statement? Where
23 is our statement?

24 Q. And have you heard from Mr. Naumann since August 14, since
25 the e-mail that is on the front page of the exhibit?

1 A. No.

2 Q. And at that point, what did he say he was going to do with
3 respect to an accounting?

4 A. That he would get the accounting done. When I asked him,
5 "When?" his answer was: Just as quick as humanly possible.

6 Q. Did Mr. Naumann ever say to you that the reason why he
7 couldn't do an accounting is because he was confused based on
8 the Amegy escrow account that was also performing functions
9 with respect to delivering sand?

10 A. No.

11 Q. Did he ever say there was any confusion about where the
12 money was supposed to come and go?

13 A. No.

14 Q. Did he provide an explanation? I see one, sort of, on the
15 first page of the exhibit.

16 A. Well, his explanation he had here is: We manage money
17 accounts for multiple customers, so our day is filled with
18 tracking down lazy clients who fail to send in supporting
19 documentation -- documents, locating incoming wires and the
20 like. That is what eats up time we can use to be productive
21 otherwise.

22 MR. JEFFERSON: Your Honor, I would offer
23 Defendant's Exhibits 4 and 5, which are these e-mail
24 exchanges.

25 THE COURT: Any objection?

1 MS. HYMAN: No, Your Honor.

2 THE COURT: Those are admitted.

3 BY MR. JEFFERSON:

4 Q. What is the current status of the memorandum of
5 understanding, which is Exhibit No. 1?

6 MR. JEFFERSON: Your Honor, I made a bit of a mess.

7 THE COURT: I think she still has them all.

8 MR. JEFFERSON: I spilled some water.

9 BY MR. JEFFERSON:

10 Q. What is your understanding of the current status of the
11 memorandum of understanding that was entered into between
12 Mr. Bates and COFS?

13 A. We terminated it.

14 Q. And did I terminate it at your request?

15 A. Yes.

16 THE COURT: When did that occur?

17 THE WITNESS: I can't remember the date.

18 THE COURT: This month? Last month?

19 THE WITNESS: This month.

20 BY MR. JEFFERSON:

21 Q. Was the letter of termination actually sent on August
22 the 15th?

23 A. I honestly can't remember the date.

24 Q. Okay.

25 MR. JEFFERSON: If I may approach, Your Honor.

1 THE COURT: Yes.

2 BY MR. JEFFERSON:

3 Q. Let me hand you, Ms. Kline, what has been marked as
4 Defendant's 6 and 7. Can you identify those, please, for the
5 Court?

6 A. Yes. Transmittal email and letter from Lamont Jefferson
7 to Tiffany Clausewitz and Shellie Reyes.

8 Q. And is that 6 or is that 7?

9 A. 6.

10 Q. And what is the date on the letter?

11 A. August 15.

12 Q. All right.

13 MR. JEFFERSON: Your Honor, we offer Defendant's
14 Exhibit 6.

15 THE COURT: Any objection?

16 MS. HYMAN: No, Your Honor.

17 THE COURT: 6 is admitted.

18 BY MR. JEFFERSON:

19 Q. And what is Defendant's 7?

20 A. It is an e-mail to Mr. Naumann from Lamont Jefferson. The
21 e-mail went to Mr. Naumann, Tiffany Clausewitz, Shellie Reyes
22 on August 15.

23 Q. And in that e-mail -- I will just read it quickly for the
24 record -- it says: Mr. Naumann, please see the correspondence
25 attached and e-mail below. Complete Oil Field Services

1 expects that all funds held in the ELC escrow account will be
2 delivered to the company in the next 24 hours, as provided for
3 in section 1.4 B of the agreement. Please let me know if you
4 need additional information to ensure that payment is
5 accomplished.

6 Did I read that correctly?

7 A. That is correct.

8 Q. And that was dated August 15 of 2017, correct?

9 A. Correct.

10 MR. JEFFERSON: I will offer Defendant's 7, if I
11 haven't already.

12 THE COURT: Any objection?

13 MS. HYMAN: No, Your Honor.

14 THE COURT: 7 is admitted.

15 MR. JEFFERSON: I will pass the witness, Your Honor.

16 THE COURT: Any questions?

17 MS. HYMAN: Yes, Your Honor.

18 *-*-*-*-*-*-*

19 CROSS EXAMINATION

20 BY MS. HYMAN:

21 Q. Ms. Kline, why was COFS formed?

22 A. To sell sand.

23 Q. To who?

24 A. To Pro Petro or other customers down the road.

25 Q. So at the time, Pro Petro was the only customer?

1 A. Yes.

2 Q. And when was it formed?

3 A. In April.

4 Q. Of?

5 A. 2017.

6 Q. Did COFS, at that time, have connections to frac sand
7 producers?

8 A. Sam had some connections because he had been working on it
9 since -- in January-ish.

10 Q. And so -- and when he formed in April to source frac sand
11 for Pro Petro, who did you expect to buy the sand from?

12 A. From Bates Energy.

13 Q. So at the time that you formed COFS, you intended to buy
14 the sand from Bates Energy?

15 A. They were already in conversation, and it was just shortly
16 after that that -- that's why it got filed at that point, as
17 we were getting ready to go.

18 Q. Okay. And did COFS do any due diligence on Bates Energy
19 before going into business with that company?

20 A. We did do some due diligence.

21 Q. And what about due diligence on Mr. Bates?

22 A. We saw the newspaper articles. We had multiple
23 conversations, and our intent to protect ourself was to set up
24 these escrow accounts.

25 Q. So the newspaper articles you are referring to are that

1 Mr. Bates' prior company Four Winds had filed for bankruptcy?

2 A. Yes.

3 Q. And that Mr. Bates had been indicted for fraud in
4 connection with his prior company?

5 A. Yes.

6 Q. And you started a new company, COFS, in order to do
7 business with Mr. Bates, knowing those facts?

8 A. We started the new company -- when we did that, we didn't
9 know those facts. They came out a little bit later, but it
10 was not a lot later. It was at about the same time.

11 Q. When you say, "The facts came out a little bit later,"
12 what do you mean?

13 A. We didn't know the facts until we started doing some -- we
14 Googled him, basically.

15 Q. So, again, I am trying to set the timeline. You started
16 COFS intending to do business with Mr. Bates and --

17 A. Well, let me correct that.

18 Q. Okay.

19 A. We started COFS thinking that we might be doing business
20 with Mr. Bates, but with someone else as well, and we were
21 working out how to get things going.

22 Q. And what was the other company you thought you might be
23 doing business with?

24 A. We didn't have anybody else targeted, as in a specific
25 company.

1 Q. Okay. And so you started COFS intending to do business
2 with Sam Bates or maybe another company, but you didn't have
3 anybody in particular in mind?

4 A. Right.

5 Q. And then you formed COFS, and then did you do the due
6 diligence before or after you signed the memorandum of
7 understanding and the escrow agreement?

8 A. We did it before we signed both of those documents. We
9 thought that ELC would protect our funds.

10 Q. Okay. So COFS was formed in April?

11 A. Uh-huh.

12 Q. And the memorandum of understanding and the escrow
13 agreement were signed in April?

14 A. Right. It was like a week or two later.

15 Q. Okay. And in that two weeks, you learned that Mr. Bates
16 was under indictment and that his immediate prior frac sand
17 company had filed for bankruptcy?

18 A. Yes.

19 Q. Okay. When you started purchasing from CSI, how did you
20 learn about CSI?

21 A. Sam had talked to them in January, and Eric Strange was in
22 his cellphone, and when he was with one of -- I think it was
23 Mark Silva, they were driving around Wisconsin, they saw the
24 mine, and Sam said, basically, "Oh, I know who this is," and
25 then he called up Eric Strange.

1 Q. Who is Mark Silva?

2 A. He is a Bates representative.

3 Q. So Sam Taylor and a Bates representative were driving
4 around Wisconsin looking at sand companies?

5 A. Bates had represented -- well, I think David Bravo was
6 supposed to meet him, to begin with. And it is all in the
7 transcripts, so -- of the hearing. And -- but David Bravo
8 didn't. They had Mark Silva meet him. And mark Silva was
9 supposed to be showing him the mines that Mr. Bates was going
10 to be pulling the sand out of.

11 Q. Okay. So to answer the question I actually asked, Mr.
12 Silva and Mr. Taylor were driving around Wisconsin looking at
13 mines? Yes or no?

14 A. Yes. They were just driving by them, basically, and Mark
15 Silva would say --

16 Q. If you could just answer the questions I ask --

17 A. Yes.

18 Q. -- that would be helpful. Okay. And so was CSI one of
19 the mines that Mr. Silva pointed out to Mr. Taylor as a mine
20 that Bates Energy would be getting sand from?

21 A. No.

22 Q. No.

23 A. He pointed out that mine, but he did not point out that it
24 was a mine that he would be getting product from.

25 Q. So he pointed out, here is a sand mine --

1 A. They stopped to go to the bathroom. Sam says: What is
2 that? Who owns that mine?

3 And Mr. Silva says: Well, that is La Prairie.

4 And Sam said: Oh, I know Eric Strange. And they
5 talked about Eric Strange was associated with La Prairie CSI.

6 Q. And this is your understanding of that conversation based
7 on talking to who?

8 A. It is actually in the transcripts of the hearing.

9 Q. This is your understanding --

10 A. Yes.

11 Q. -- from who?

12 A. From Sam.

13 Q. Okay. When you had ELC pay for the sand to CSI, were the
14 documents releasing the money from the ELC escrow signed by
15 you and Mr. Bates?

16 A. No. They were signed by Dewayne and myself.

17 Q. And what was your understanding about who could agree to
18 release money from the ELC escrow?

19 A. It was my understanding that Dewayne was his
20 representative and he could release it under the caveat of the
21 \$1 million letter from Mr. Bates.

22 Q. Dewayne was the representative of ELC?

23 A. Yes.

24 Q. Okay. So it is your understanding that if it was okay
25 with ELC and it was okay with COFS, money could be released

1 from the ELC escrow account?

2 A. To CSI. Is that specifically what you are asking about,
3 those transactions, or --

4 Q. Just generally. I mean, for the CSI transactions, did
5 anybody from Bates Energy sign to release money from ELC, the
6 individual transactions?

7 A. No.

8 MS. HYMAN: Pass the witness.

9 THE COURT: Anything else?

10 MR. JEFFERSON: No, Your Honor.

11 THE COURT: You may step down. Thank you.

12 That transaction report that Ms. Hyman delivered
13 this morning, is there anything indicating any transaction
14 after August 15?

15 MR. JEFFERSON: Yes. There is a \$552,000 --

16 MS. HYMAN: No. That is the balance.

17 MR. JEFFERSON: It appears that there is a
18 transaction for \$140,000 to Bates Energy on August 23rd, 2017,
19 if I am reading this correctly.

20 THE COURT: Okay. That answers my question.

21 Any other witnesses, Mr. Jefferson?

22 MR. JEFFERSON: Mr. Naumann, if I am pronouncing
23 that name correctly.

24 THE COURT: If you will come up here.

25 (Oath administered to the witness.)

1 COURTROOM DEPUTY: Thank you.

2 THE WITNESS: Thank you.

3 *-**-**-**-**-**

4 DIRECT EXAMINATION

5 BY MR. JEFFERSON:

6 Q. State your name, please.

7 A. Dewayne Naumann.

8 Q. Mr. Naumann, you know Janis Kline here, correct?

9 A. I am familiar with her by e-mail and phone.

10 Q. You have not met her in person?

11 A. Not in person.

12 Q. You don't dispute that she asked you numerous times for
13 copies of statements reflecting activity in the ELC escrow
14 account, do you?

15 A. No.

16 Q. And you did not provide that information, did you?

17 A. There is no provision in the escrow agreement to do that.

18 Q. And, therefore, you did not?

19 A. Exactly.

20 Q. So from April 14 until now, you have not provided a single
21 statement about any disbursements from that ELC escrow
22 account, correct?

23 A. I complied with the terms of the escrow agreement,
24 correct.

25 Q. In other words, you have not provided any information

1 about disbursements?

2 A. It was stated earlier that I represented that a year-end
3 accounting would be performed and delivered, but other than
4 that, no.

5 Q. What year-end were you going to provide a statement?

6 A. Tax year.

7 Q. And how do we know that?

8 A. Well, I put it in writing. I said I would do it.

9 Q. You said that you were going to provide a statement at
10 year-end?

11 A. It is in the e-mail that you presented earlier that I said
12 I would do a year-end accounting. And, generally, for tax
13 purposes in the business world, that's what you do.

14 Q. Mr. Naumann, as an escrow agent, you understand that you
15 are a neutral, correct?

16 A. Correct.

17 Q. You receive instructions from two parties and you do what
18 those parties say, correct?

19 A. With discretion provided in the escrow agreement.

20 Q. And the parties are supposed to provide you with written
21 instruction, correct?

22 A. Yes.

23 Q. And so Ms. Kline or someone from COFS was supposed to have
24 authorized all of the disbursements that occurred from the
25 escrow account on which you were the escrow agent, correct?

1 A. I am not sure I understand the question.

2 Q. Someone from COFS had to sign off on every payment out of
3 the ELC escrow account that you managed, correct?

4 MS. HYMAN: Objection, Your Honor. Calls for a
5 legal conclusion.

6 THE COURT: That is overruled. You can answer.

7 THE WITNESS: Okay. If you would please repeat the
8 question one more time so I understand it.

9 BY MR. JEFFERSON:

10 Q. Okay. You expected someone from COFS to give you
11 instruction every time money was paid out of the -- your ELC
12 escrow account, correct?

13 A. I believe it is the reverse. I believe the way the
14 understanding is is the person who wants to receive funds
15 initiates the process, with the subsequent conclusions by
16 COFS. So in answer to your question, Bates Energy would have
17 had to initiate the request for payment under the
18 circumstances that you outlined.

19 THE COURT: What do you mean, "subsequent
20 conclusions"? So Bates would initiate the request, and then
21 what did you expect of COFS?

22 THE WITNESS: Either approval or denial or no
23 action.

24 BY MR. JEFFERSON:

25 Q. When this escrow account was set up, did you set it up in

1 a segregated account?

2 A. I set it up in an account that was previously reserved for
3 Bates Energy Oil & Gas.

4 Q. Was the escrow account that you set up, was that just for
5 the procurement of sand related to the Bates Energy COFS MOU?

6 A. No.

7 Q. So what other accounts had a claim against that particular
8 bank account?

9 A. That bank account, the only other client-related
10 expenditures that were subject to that bank account were a
11 previous contract that had been fulfilled and there were
12 errant last-minute items that needed to be paid in order to
13 close out the contract.

14 Q. So what was the balance of the account before the million
15 dollars got funded into it?

16 A. I believe it was, to the best of my recollection, 105,000,
17 maybe, more or less, but that money was to be immediately
18 turned over whenever I was -- I received it, according to the
19 terms of that escrow agreement.

20 Q. Who was that escrow agreement with?

21 A. It was a company by the name of Nitro something or other
22 out of Oklahoma, I believe.

23 Q. Who was the principal of that company?

24 A. I don't recall.

25 Q. Were you an escrow agent for those funds?

1 A. I was on a spot purchase payment plan only. It was --
2 money came in, paid for the sand.

3 Q. So you did not set up a separate account when the ELC
4 money was wired to ELC from Pro Petro?

5 A. No.

6 THE COURT: Why not?

7 THE WITNESS: Sir, it is a matter of just
8 transacting accounting and bookkeeping through a single
9 account for one client. That way, I keep the disbursements
10 for one client clear and don't have to worry about commingling
11 it with other accounts.

12 THE COURT: But you did commingle it. You
13 commingled it with 105,000 that belonged to some other
14 transaction.

15 THE WITNESS: With all due respect, sir, I would
16 disagree. I kept accurate records for both transactions, and
17 when the account was technically terminated under the use with
18 the previous client, then the account became available for the
19 use with COFS.

20 BY MR. JEFFERSON:

21 Q. You set up bank accounts, I presume, throughout your
22 career as an escrow agent, right?

23 A. Yes.

24 Q. For how long have you been serving as an escrow agent?

25 A. Under my current configuration, about the last four years.

1 Q. And you know it is not a big deal to set up a bank
2 account, right?

3 A. Well, it is to me, but, yes, it is not hard to go walk
4 into a bank and say, "I need a bank account."

5 Q. So it would not have been a problem to set up a new
6 account number that would just handle this particular
7 expenditure of money, correct?

8 A. The expense related to that sort of thing is something
9 that I choose -- for lack of better term, I chose not to go to
10 the additional expense of having to create a new account and
11 start all over again when I had an account that was
12 functioning and was available to use and had had little to no
13 activity for the last nine months.

14 THE COURT: Well, let me ask you this. After the
15 \$1 million was deposited into that account --

16 THE WITNESS: Yes, sir.

17 THE COURT: -- did you ever make any disbursements
18 from that account that were not related to the COFS
19 transactions?

20 THE WITNESS: From a bookkeeping standpoint, there
21 were a few small transactions that were just meant to clear
22 the books on the previous contract.

23 THE COURT: And you made no other disbursements?

24 THE WITNESS: No, sir. No other disbursements.

25

1 BY MR. JEFFERSON:

2 Q. Now, Mr. Naumann, let me make sure I understand what you
3 said a moment ago. As an escrow agent in this transaction,
4 you required instruction from two parties, correct? Mr. Bates
5 was one of them, correct?

6 A. Uh-huh. Correct.

7 Q. And COFS for the other one?

8 A. Correct.

9 Q. And if you didn't get instruction from both parties, then
10 you couldn't authorize a payment from that account, correct?

11 A. With the exception of the latitude that was in the
12 agreement that they both signed.

13 Q. What are you referring to? What part of the agreement are
14 you referring to?

15 A. Section 2.

16 Q. You are referring to Section 2 of the escrow account?

17 A. The escrow agreement, yes.

18 Q. The escrow agreement that is dated April -- signed on
19 April 14 by all parties?

20 A. I am assuming that you are looking at the one between
21 myself and COFS and Bates Energy Oil & Gas.

22 THE COURT: Is that the same thing as Exhibit 2 that
23 we talked about earlier?

24 MR. JEFFERSON: It is Exhibit 2.

25

1 BY MR. JEFFERSON:

2 Q. What do you recall in Section 2 that would authorize a
3 disbursement without a COFS direction?

4 A. Without it in front of me, I would hesitate to try to
5 opine.

6 Q. What do you remember?

7 A. What do I remember?

8 THE COURT: Why not just hand it to him so we can
9 clear this up.

10 THE WITNESS: Section 2.2, paragraph B. ELC shall
11 be protected in acting upon any written notice, request,
12 waiver, consent, certificate, receipt, authorization, power of
13 attorney or other paper or document which ELC in good faith
14 believes to be genuine and what it purports to be, including,
15 but not limited to, items directing investment or
16 non-investment of funds, items requesting and authorizing
17 release, disbursement or retainage of the subject matter of
18 this agreement and items amending the terms of this agreement
19 or PSA.

20 THE COURT: Well, but look at 1.3.

21 THE WITNESS: 1.3. I am aware of what 1.3 says,
22 sir.

23 THE COURT: So 1.3 required you to disburse executed
24 by buyer. Buyer is COFS. The section you read is protecting
25 you from any fraudulent or fake disbursements that you weren't

1 aware of. Isn't that the correct reading of this agreement?

2 THE WITNESS: I take it all under the context of
3 authority to act, as the title of -- the caption for that
4 particular section of the agreement.

5 THE COURT: Go ahead.

6 BY MR. JEFFERSON:

7 Q. So, Mr. Naumann, you are saying that under this agreement,
8 under 2.2-B, if you got a request just from Mr. Bates, not
9 from COFS, then you were entitled to disburse funds based on
10 that direction?

11 A. That's what the agreement says.

12 Q. And did you do that in this case? Did you get direction
13 from Mr. Bates?

14 A. Yes, I did, or his attorney, yes.

15 Q. Or his attorney?

16 A. Yes.

17 Q. Which attorney?

18 A. Tiffany.

19 Q. And did you follow those directions based upon this
20 particular part of the agreement?

21 A. Correct.

22 Q. So how, in your mind, did you reconcile 2.2 with 1.3,
23 which requires the receipt of a signed document by the parties
24 to the agreement? How did you -- these paragraphs conflict,
25 don't they?

1 A. Not to me. The agreement only technically applies to my
2 authority to act, and I took my authority to act from 2.2.

3 Q. When you acted, as you say, did you notify COFS that that
4 is what you were doing?

5 A. I didn't -- it doesn't say in here that I have to.

6 Q. So, therefore, you didn't?

7 A. I did not.

8 THE COURT: I mean, are you claiming that any of the
9 notices that you got from Bates was fake?

10 THE WITNESS: I did not. And if you review the
11 information that I am provided, you will see that I rejected
12 on numerous occasions the requests for funds to be paid out.

13 THE COURT: But with regard to the payments you did
14 pay out, are you saying that any of those were fraudulent?

15 THE WITNESS: In what respect, sir?

16 THE COURT: Well, I am looking -- at your
17 construction, giving you the benefit of the doubt of 2.2 and
18 2.3, the way it looks to me, I mean, at first glance, is that
19 if you receive fraudulent instructions, you had
20 indemnification from that.

21 So what I am asking you is, when you made payments,
22 are you claiming that anything you relied upon was fraudulent?

23 THE WITNESS: Not to my knowledge.

24 BY MR. JEFFERSON:

25 Q. I have a stack of documents here that your lawyer handed

1 me just before we began the hearing. I have not had a chance
2 to review them.

3 Does this stack of documents show checks written to
4 rail companies?

5 A. Checks?

6 Q. Funds --

7 A. No.

8 Q. -- sent to --

9 A. To rail companies?

10 Q. Yes.

11 A. No.

12 Q. Does it reflect funds sent to mines?

13 A. Not that I am aware of.

14 Q. Is there a document here that -- I presume you are
15 familiar with this stack of documents?

16 A. Yes.

17 Q. Is there a document here that shows that Mr. Bates paid
18 for sand?

19 A. Paid for sand?

20 Q. Yes, sir.

21 A. No. Not that I am aware of.

22 Q. Is there a document here that shows that Mr. Bates or you
23 paid for either sand or for the transporting of sand?

24 A. Are you talking in whole?

25 Q. Yes. In whole.

1 A. Yes. There are documents in that amalgam of paper that
2 you hold in your hand that shows that sand was paid for.

3 Q. And sand from CSI was paid for, wasn't it?

4 A. Wisconsin Sands is the name of the bank account that the
5 money went to, which I am assuming is one of the multiple
6 iterations of La Prairie Sand, CSI, whatever -- whatever their
7 name was, I had to deal with the banking side of it.

8 Q. And that, as far as you knew, all dealt with one mine,
9 right?

10 A. As far as I know.

11 Q. All right. Are you aware of any sand being procured from
12 any other mine besides the La Prairie CSI mine?

13 A. By whom?

14 Q. By Mr. Bates, by you, by COFS.

15 A. Yes. Yes. Documentation delivered in that stack of
16 paperwork is a mine transloading delivery system. I am not
17 sure what their actual function is, but it is called Tier 1,
18 with the number 1.

19 Q. Who procured that?

20 A. Mr. Bates.

21 Q. So Mr. Bates procured some kind of a provision of sand
22 from Tier 1?

23 A. Correct.

24 Q. How much sand?

25 A. I don't know the exact amounts. It was 1,400 tons of

1 40-70, and 400 or 500 tons of 100 mesh. I am not exactly
2 100-percent sure on the numbers. All I am concerned was the
3 bottom-line price and how much money was going in and going
4 out.

5 Q. And you ensured that that fund got transferred?

6 A. Correct.

7 Q. On Mr. Bates' instruction?

8 A. Correct.

9 Q. And that money came out of the million dollars that COFS
10 had deposited?

11 A. Correct.

12 Q. And you -- COFS, is this the first time that COFS has
13 heard about this expenditure of funds?

14 A. I can't testify to what they know and don't know.

15 Q. You didn't give them this information?

16 A. It is not up to me to notify them.

17 Q. And, therefore, you did not?

18 A. Correct.

19 Q. And so unless they found out from some other source, they
20 wouldn't know?

21 A. I assume so.

22 Q. Are there any other mines or other sand providers from
23 whom sand was procured in this stack of documents?

24 A. Not that I am aware of.

25 Q. So just the one, the Tier 1?

1 A. I am not privy to Mr. Bates' business operations, so I
2 have no idea. When I receive an invoice or a demand from him,
3 the demand goes from the account into his separate bank
4 account. What he does with that money after that is none of
5 my business.

6 Q. Does this stack of documents include all of the demands
7 that Mr. Bates made for payment?

8 A. Yes.

9 Q. Did you consider it necessary, Mr. Naumann, to receive a
10 bill of lading or similar document to support a payment?

11 A. It wasn't part of the instructions that I received from
12 Mr. Bates, one way or the other. Verification was between the
13 parties, not at my expense.

14 Q. Now, Mr. Naumann, you understand the importance of a bill
15 of lading?

16 A. I understand what it is.

17 Q. You insisted on bills of lading in order to support
18 payments out of the Amegy account, didn't you?

19 A. That was at the direction of the party on the other side.

20 Q. And before you would authorize payment, you would insist
21 on seeing a bill of lading, wouldn't you?

22 A. According to the terms of the escrow agreement, if they
23 agreed on payment of the funds, I didn't look behind that.

24 Q. "If they agreed," you are talking about Bates and COFS?

25 A. Anybody, in any agreement. It doesn't matter.

1 Q. Okay. I mean, the bottom line here is, you felt like if
2 you got an instruction from Mr. Bates, and if there was
3 nothing on the face of it that looked fraudulent, you were
4 okay with paying money out?

5 A. Yes.

6 MR. JEFFERSON: Your Honor, if I could approach.

7 BY MR. JEFFERSON:

8 Q. I am going to hand you, Mr. Naumann, what I have marked as
9 Defendant's Exhibit 8. What is Defendant's Exhibit 8?

10 A. Disbursement authorization number 5.

11 Q. And it pertains to what?

12 A. It pertains to the payment of \$89,616.64 exactly
13 representing 60 percent of invoice number S01007, payable to
14 Wisconsin Bank & Trust for the benefit of CSI Sands
15 (Wisconsin) Ltd.

16 Q. And in that event, you were acting as an instructor,
17 right? I mean, you were not the escrow agent with respect to
18 this disbursement?

19 A. If you can define "instructor."

20 Q. One authorized to provide instructions to an escrow agent.

21 A. Okay. I am not sure I am following you, but I believe I
22 understand where you are going. This was the arrangement
23 between -- the verbal understanding between COFS and my
24 company to facility transactions outside of the purview of the
25 original memorandum of understanding, which I did not sign and

1 I am not a party to, and the original escrow agreement between
2 COFS, Bates Energy and my company.

3 Q. Right. But this would be appropriate documentation to
4 instruct an escrow agent about what to do with funds, correct?

5 A. This is an example.

6 Q. And it is signed by both parties to the escrow agreement,
7 correct?

8 A. It is. Or let me correct that and say, I know it is
9 signed by me. That is my signature on that document.

10 MR. JEFFERSON: Your Honor, I will offer Exhibit 8.

11 THE COURT: Any objection?

12 MS. HYMAN: No, Your Honor.

13 THE COURT: 8 is admitted.

14 MR. JEFFERSON: I will pass the witness.

15 THE COURT: Any questions?

16 MS. HYMAN: Yes, Your Honor.

17 *-*-*-*-*-*-*

18 CROSS EXAMINATION

19 BY MS. HYMAN:

20 Q. Mr. Naumann, if you could look at Exhibit 2, the escrow
21 agreement again.

22 A. Yes, ma'am.

23 Q. Could you read the beginning of paragraph 1.3, that little
24 introduction there.

25 A. Escrow procedure and payment instruction.

1 Q. And then read the next sentence, please.

2 A. The fund, together with all interest earned thereon, if
3 any, which interest shall become and remain a part of the
4 fund, shall be held and disbursed in accordance with the terms
5 of this escrow agreement and PSA.

6 Q. And then if you could look to see in paragraph 1.1 what
7 the definition of the fund is.

8 A. 1.1. Establishment of fund. The undersigned buyer has
9 caused or will cause to be deposited with ELC those certain
10 amounts, from time to time, pursuant to that certain purchase
11 and sale agreement ("PSA") by and between the buyer and
12 seller, dated April 14, 2017 (such sum, or the balance thereof
13 remaining from time to time being referred to herein as the
14 "fund."

15 Q. So the way I read that, the fund is the deposit or the
16 balance remaining after there have been disbursements. Is
17 that how you read it?

18 A. Yes. That is correct.

19 Q. And so, then, paragraph 1.3 would be talking about what
20 happens to the fund, all of the remaining money, as opposed to
21 individual disbursements?

22 A. Correct.

23 Q. Whereas 2.2 talks about your authority to act with respect
24 to disbursements?

25 A. Correct.

1 Q. You were asked whether --

2 THE COURT: Well, let me ask you here. I mean, your
3 construction of this, I mean, there is money left over, then
4 what? It never reverts back to the depositor? They just get
5 to keep it? I mean, I don't understand where you are going
6 with this.

7 MS. HYMAN: Your Honor, that's how -- I didn't write
8 the document.

9 THE COURT: But is that where you are going with
10 this? That's what the logical extension of your argument is.

11 MS. HYMAN: No. That the fund, the remaining money
12 could be disbursed in accordance with the terms of this escrow
13 agreement and PSA as follows by a document executed by the
14 buyer. You can deliver that fund to the undersigned against
15 their joint receipt or to any of the undersigned upon written
16 direction of each other or in accordance with the joint
17 written instruction, or if there is only one undersigned, to
18 the undersigned. That would be the balance -- ways that the
19 balance of the fund could be paid out.

20 THE COURT: Okay. I see where you are headed.
21 Okay. Go ahead.

22 BY MS. HYMAN:

23 Q. You were asked earlier if when you received requests from
24 Mr. Bates to disburse funds you notified COFS and you said
25 that you did not?

1 A. I did not.

2 Q. When you received requests from COFS to disburse funds,
3 did you notify Mr. Bates?

4 A. I did not.

5 Q. And why did you not notify one party when the other party
6 was requesting disbursements out of the account?

7 A. Because I was instructed not to.

8 Q. By who?

9 A. Janis Kline.

10 Q. And what did Ms. Kline tell you?

11 A. Do not share any information with Stan Bates.

12 MS. HYMAN: Your Honor, if I could approach.

13 THE COURT: Come on up.

14 BY MS. HYMAN:

15 Q. I have handed you what has been marked as ELC Exhibit 1.
16 Could you please tell the Court what that document is?

17 A. That is a reconciliation of the account activities related
18 to the accounts specifically held for Bates Energy Oil & Gas
19 and the Complete Oil Field Services business transaction under
20 the escrow agreement.

21 Q. Who prepared this document?

22 A. My office did, myself and my assistant.

23 Q. And is it a compilation of information contained in other
24 documents that you have at your office?

25 A. That is correct.

1 Q. And does this reflect every transaction in or out of
2 the -- related to that \$1 million?

3 A. Correct.

4 MS. HYMAN: I offer Exhibit 1, Your Honor.

5 MR. JEFFERSON: No objection.

6 THE COURT: That is admitted.

7 BY MS. HYMAN:

8 Q. I could ask you a couple of things about this, but let me
9 skip ahead to the end. The Judge asked earlier whether this
10 document reflected any transactions after August 15; do you
11 recall that?

12 A. After August 15?

13 Q. Yes, sir.

14 A. There is one transaction to Bates Energy for demurrage and
15 rail storage costs for sand initiated by Bates Energy Oil &
16 Gas for the benefit of COFS.

17 Q. I believe you mentioned that that was as a result of a
18 demand letter from an attorney; is that correct?

19 A. Yes.

20 MS. HYMAN: May I approach, Your Honor?

21 THE COURT: Yes.

22 BY MS. HYMAN:

23 Q. Mr. Naumann, I have handed you what has been marked as ELC
24 Exhibit 2. Could you identify that document, please?

25 A. It is a letter from the Rosenblatt Law Firm signed by

1 Tiffany S. Clausewitz.

2 Q. And what is the date?

3 A. August 23rd, 2017.

4 Q. Is this a letter that you received?

5 A. Yes.

6 MS. HYMAN: I offer ELC Exhibit 2, Your Honor.

7 MR. JEFFERSON: No objection.

8 THE COURT: That is admitted.

9 BY MS. HYMAN:

10 Q. Could you please explain what this letter was requesting?

11 A. This letter is demanding that I make payments to Bates
12 Energy Oil & Gas to cover expenses incurred directly for the
13 activities between them and COFS in the amount of \$140,541.85.

14 Q. If you could, the one, two -- third paragraph down, could
15 you read the last sentence?

16 A. You are hereby demanded to make this disbursement
17 according to Sections 1.D, 3.C and 3.D of the MOU, together
18 with Sections 2.2B of the escrow and disbursement agreement
19 related thereto.

20 Q. And Section 2.2B is the one that we were discussing that
21 you believe gives you authority to act, correct?

22 A. Yes.

23 Q. The second page of that exhibit, could you please explain
24 what you understood this second page to be?

25 A. This is a detailed invoice from Bates Energy Oil & Gas

1 outlining the charges it incurred for rail storage of cars
2 delivered to a certain transload facility somewhere in the
3 state of Texas. I am assuming it is Odessa, because that's
4 what it says, and these are the rail demurrage charges that
5 were incurred by Bates Energy Oil & Gas as it relates to their
6 procurement of sand for the benefit of COFS.

7 Q. Could you just tell us what a demurrage charge is?

8 A. A demurrage charge, as I understand it, is the charge the
9 railroad charges individuals or companies to place railcars on
10 lines for rail storage. In simple terms, the railroads, they
11 charge you from the minute it leaves until the minute you
12 unload the car and return the car back to empty status. And
13 the demurrage charge, the way I understand it, is the charge
14 per day that the owner of the contents of the car is billed
15 for the purpose of having it set on whatever rail line it is
16 occupying.

17 Q. Other than that 100 -- well, let me ask you this. Did ELC
18 pay that \$140,541.85 in response to the demand letter?

19 A. Yes.

20 Q. And did you pay it out of the escrowed funds, as was
21 demanded?

22 A. Yes.

23 MS. HYMAN: May I approach, Your Honor?

24 THE COURT: Yes.

1 BY MS. HYMAN:

2 Q. Mr. Naumann, I have handed you what has been marked
3 Exhibit ELC No. 3. Could you please identify this group of
4 documents?

5 A. The first one is a letter from Commercial Insurance
6 Associates, LLC addressed to Mr. Bates, president of Bates
7 Energy Oil & Gas. Pursuant to your request, below is the
8 wiring instructions for Commercial Insurance Associates.
9 Signed by Mr. Kevin D. Brons, principal of Commercial
10 Insurance Associates.

11 They are identifying their bank, where they are to
12 receive payment for insurance related to railcars.

13 Q. And then behind that, I see it looks like four pages of
14 e-mails; is that correct?

15 A. Correct. Those e-mails pertain to a dialogue between
16 myself, Mr. Bates and Mr. Brons, the insurance agent, related
17 to the cancellation of the policy and the reimbursement of
18 those funds that were expended to procure the insurance
19 premium, to cover the insurance on the cars that were being
20 procured for COFS.

21 MS. HYMAN: I offer Exhibit 3, Your Honor.

22 MR. JEFFERSON: No objection.

23 THE COURT: That is admitted.

24 BY MS. HYMAN:

25 Q. Could you please -- does the information reflected on

1 Exhibit 3 show up on this spreadsheet that is Exhibit 1?

2 A. Yes, it does.

3 Q. What line is that?

4 A. Item number 3, I believe. Let me double-check. That is
5 correct.

6 Q. So did you pay \$10,761.52 for insurance for the COFS-
7 Bates Energy transaction?

8 A. I did.

9 Q. And out of the escrowed funds?

10 A. I did.

11 Q. At Mr. Bates' request?

12 A. I did.

13 Q. And that money was wired directly to CIA Associates --

14 A. Correct.

15 Q. -- with the information on the front of this document?

16 A. Correct.

17 Q. You mentioned that the insurance was canceled and there
18 was a refund of the premium?

19 A. Yes, there was.

20 Q. And where did the refund go?

21 A. The refund --

22 Q. To the best of your knowledge.

23 A. Since the refund was paid on behalf of Bates Energy Oil &
24 Gas, the refund was credited back to Bates Energy Oil & Gas.

25 THE COURT: Wait a minute. You took the money out

1 of the escrow account, but then you gave it to Bates?

2 THE WITNESS: I did not give it to anyone, sir. I
3 paid --

4 THE COURT: Wait.

5 THE WITNESS: -- the insurance premium and the
6 insurance company --

7 THE COURT: Go back to my question.

8 THE WITNESS: All right.

9 THE COURT: My question is, the insurance premium
10 was taken out of the escrow account; is that correct?

11 THE WITNESS: That is correct.

12 THE COURT: And then when the insurance later got
13 canceled or whatever and a refund was made, did that money go
14 back into the escrow account?

15 THE WITNESS: It did not. At my insistence, it did
16 not go back into the escrow account. The reimbursement for
17 the unused premium or cancellation went directly to Bates
18 Energy Oil & Gas.

19 BY MS. HYMAN:

20 Q. That was at your request?

21 A. No. It was at my insistence that the funds come back to
22 me, but they did not.

23 Q. So you were requesting that the cancellation, the premium
24 come back to you?

25 A. Correct.

1 Q. And it did not come back to you?

2 A. Correct.

3 Q. Or ELC?

4 A. Correct.

5 Q. And it went to Mr. Bates instead?

6 A. It went back to Mr. Bates' bank account for Bates Energy
7 Oil & Gas.

8 Q. Whose decision was that?

9 A. I have no idea.

10 THE COURT: Did you try to get the money back from
11 Bates?

12 THE WITNESS: Yes, sir, I did, on numerous
13 occasions. There were many e-mail and phone calls back and
14 forth checking on the status of the refund, and then I was
15 informed later on that the refund was sent directly to the
16 Bates Energy Oil & Gas bank account.

17 THE COURT: My question was, did you try to get the
18 money back from Bates?

19 THE WITNESS: Yes, I did, several times.

20 BY MS. HYMAN:

21 Q. Going back to Exhibit 1, so line 1 is the deposit, the
22 million dollars, correct?

23 A. Correct.

24 Q. And then line 2, if you could explain what line
25 2 reflects.

1 A. Line 2 basically is an internal process for handling money
2 that I am not getting paid for. The funds were transferred
3 into an account that my company owns that is a high-yield
4 interest-bearing account, and that money sat there available
5 to be retransferred in at the time it was needed to be
6 disbursed for that particular transaction.

7 Q. But the balance, based on that transaction, it is still a
8 million dollars?

9 A. It is still a million dollars, correct.

10 Q. And then we talked about line 3, which is the \$10,761.52
11 for the purchase of the insurance?

12 A. Correct.

13 Q. Lines 4 and 5, if you go all the way over to the right,
14 show invoices canceled, and the balance does not seem to
15 change. Could you explain what lines 4 and 5 reflect?

16 A. Those disbursement authorizations that are the subject of
17 those particular items were canceled because the transaction
18 for the sand never went through. We were attempting to put
19 together the purchase of sand -- or I say "we." I was on the
20 receiving end of documents that represented that Mr. Bates had
21 entered into an agreement to purchase sand for COFS through
22 the individuals that are listed there, Howard Resources, to
23 fulfill his contractual or agreement obligations to COFS, but
24 it was later canceled because -- for one reason or another
25 that I am not privy to.

1 THE COURT: But did you get any bills of lading?

2 THE WITNESS: I did not, because it was canceled.

3 THE COURT: Did you make any disbursements on any of
4 those canceled accounts?

5 THE WITNESS: No, sir, I did not.

6 BY MS. HYMAN:

7 Q. So even though no disbursements were made, those
8 transactions are reflected on your accounting?

9 A. Correct.

10 THE COURT: But that's what I am confused by. Why
11 would there even be reflections on the account if you never
12 got a bill of lading and -- so there was nothing ever to
13 disburse? Why would you even be making those entries?

14 THE WITNESS: Sir, we document everything, so that
15 way there is a clear understanding of what did and did not
16 happen to the account. It is for our own internal controls as
17 well.

18 THE COURT: By the way, who drafted the escrow
19 agreement?

20 THE WITNESS: It was drafted by me four years ago
21 and modified by me a couple of times inbetween, and it has
22 been reviewed by lawyers, past and present.

23 THE COURT: So this April 14, 2017 agreement was you
24 or your company, correct?

25 THE WITNESS: Correct.

1 BY MS. HYMAN:

2 Q. Were there -- did either COFS or Bates Energy request any
3 changes to the form of the escrow agreement that you provided
4 to them?

5 A. Yes. There were a few minor changes that I believe they
6 wanted. I agreed to them, because it didn't, in my opinion,
7 change the nature of the agreement. It was just a means of
8 procuring payment documentation or other items.

9 And to be honest with you, it may be on the
10 agreement between ELC and Amegy Bank was the changes; after I
11 supplied this document in Word form to Janis for her review
12 and expecting that to remain confidential, I expected that
13 document to come back with her changes, and there were a few
14 minor changes that didn't affect the direction or content, per
15 se, of the document, in my opinion.

16 Q. To the best of your knowledge, is the second escrow
17 agreement, the one between ELC and Amegy and COFS, a document
18 that was drafted using your form of escrow agreement as a
19 starting point?

20 A. I do.

21 MS. HYMAN: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MS. HYMAN:

24 Q. I have handed you what has been marked as Exhibit ELC No.
25 4. Could you please identify that document?

1 A. It is a letter from Stan Bates, CEO, Bates Energy Oil &
2 Gas, to me at Equity Liaison Company, LLC, dated June 15,
3 2017.

4 Q. And do the other documents comprising Exhibit 4 go
5 together with that letter?

6 A. To the best of my knowledge, yes.

7 MS. HYMAN: Offer Exhibit ELC No. 4.

8 MR. JEFFERSON: No objection.

9 THE COURT: That is admitted.

10 BY MS. HYMAN:

11 Q. What is Mr. Naumann telling you in this June 15, 2017
12 letter?

13 A. You mean Mr. Bates?

14 Q. I'm sorry. Mr. Bates.

15 A. He has instructed me to distribute funds for the purpose
16 of covering -- if you will give me a minute to reread it.
17 Authorizing -- I am authorizing the distribution of funds per
18 the escrow agreement with Bates Energy. The following parties
19 will be required to submit W-9s to ELC and sign an individual
20 agreement with your company. Please not all payees -- and I
21 believe that was meant to be "note." Please note all payees
22 are responsible for their own taxes and reporting to the IRS
23 via a 1099 for ELC at the end of the year.

24 Q. And what does Mr. Bates indicate that the purpose of this
25 distribution is? The last sentence of that paragraph.

1 A. The last sentence of that paragraph: Due to liquidated
2 damages and administration fees of \$150,000.

3 Q. Do you know what Mr. Bates was referring to when he said
4 "liquidated damages and administration fees"?

5 A. Liquidated damages and administrative fees, as I
6 understand it, were the lost income, lost revenue from the
7 continuous rejection of frac sand provided by Mr. Bates to
8 COFS for their -- for their purchase.

9 Q. I notice one of the lines -- so that the total is \$65,050,
10 correct?

11 A. Correct.

12 Q. And did you disburse those funds?

13 A. Yes.

14 Q. In accordance with these instructions?

15 A. Yes.

16 Q. One of the lines is for \$10,000 to Equity Liaison Company,
17 correct?

18 A. Correct.

19 Q. And did you receive -- did your company receive that
20 money?

21 A. Yes.

22 Q. And what did that fund represent, in your mind?

23 A. Liquidated damages of lost profit as it relates to the
24 escrow agreement terms for payment to my company for services
25 provided.

1 Q. And is this Exhibit 4 reflected on the spreadsheet as line
2 6?

3 A. Yes.

4 THE COURT: I am curious. I mean, so does Mr. Bates
5 provide you any kind of documentation to support his claim
6 that sand is being rejected improperly?

7 THE WITNESS: E-mails, phone conversations, text
8 messages and the like.

9 THE COURT: And so as an escrow agent, as a neutral,
10 you just take one side and you unilaterally believe --

11 THE WITNESS: No.

12 THE COURT: -- his story and you disburse?

13 THE WITNESS: No, sir.

14 THE COURT: Then what did you do?

15 THE WITNESS: If the other side would have come to
16 me and said -- if they would have been in the same shoes, I
17 would have looked at it in a similar fashion.

18 THE COURT: Well, did you give them notice that
19 Bates was seeking these disbursements?

20 THE WITNESS: Again, that was not part of my
21 responsibility. My responsibility was to process the funds
22 and receive the documents.

23 THE COURT: Wow.

24 BY MS. HYMAN:

25 Q. Turning back to ELC Exhibit 1, I believe lines 7 and 8 --

1 well, let me ask you what line 7 and 8 reflect.

2 A. Line 7 represents \$96,804.43 paid as 60 percent of invoice
3 number SO1001, 1,709 tons at \$94.38 per ton. And without the
4 actual document in front of me, the only time we did a 60-40
5 disbursement was for CSI Wisconsin Sands or La Prairie,
6 whichever is the appropriate name for that particular
7 disbursement.

8 Q. And then what does line 8 reflect?

9 A. The identical sum being reimbursed back to ELC for the
10 invoice paid.

11 MS. HYMAN: May I approach, Your Honor?

12 THE COURT: Yes.

13 BY MS. HYMAN:

14 Q. I have handed you what has been marked as Exhibit ELC No.
15 5. Are these documents the basis for the entries on lines
16 7 and 8?

17 A. Yes, they are.

18 MS. HYMAN: I would offer Exhibit 5.

19 MR. JEFFERSON: No objection.

20 THE COURT: Admitted.

21 BY MS. HYMAN:

22 Q. Turn to the second page of Exhibit 5. This is a --
23 appears to be a disbursement request, requesting that ELC
24 disburse \$96,804.43 out of the escrow account to CSI Sands; is
25 that correct?

1 A. Correct. Out of the account specifically set up for Bates
2 Energy Oil & Gas.

3 Q. And when you got this instruction from -- so you received
4 this instruction from COFS?

5 A. Correct.

6 Q. And you made the disbursement of \$96,804.43 out of the
7 escrow account?

8 A. Yes.

9 Q. At COFS's request?

10 A. At their insistence, yes.

11 Q. Did you let Mr. Bates know that you were sending this
12 money out?

13 A. Again, I was told not to let him know that I was making
14 these disbursements.

15 MS. HYMAN: May I approach, Your Honor?

16 THE COURT: Yes.

17 BY MS. HYMAN:

18 Q. I have handed you what has been marked as ELC Exhibit 6,
19 which appears to me to be a June 30th, 2017 request from Mr.
20 Bates to disburse funds for liquidated damages, similar to the
21 one we saw before; is that correct?

22 A. Correct.

23 MS. HYMAN: I offer ELC Exhibit 6.

24 MR. JEFFERSON: No objection.

25 THE COURT: That is admitted.

1 BY MS. HYMAN:

2 Q. And did you disburse funds from the escrow account, as
3 requested in this document?

4 A. Yes, I did. It is reflected as line item number 9 on the
5 spreadsheet.

6 Q. And, again, some portion -- this is \$28,500; is that
7 correct?

8 A. Correct.

9 Q. And Equity Liaison Company did receive some moneys, \$7,500
10 out of this disbursement?

11 A. Correct.

12 Q. Other than the \$10,000 reflected on Exhibit 4 and this
13 \$7,500, as of this date, June 30th, had ELC received any other
14 sums for the work it was doing managing the escrow account?

15 A. Related to this specific escrow agreement, no.

16 Q. What about related to the Amegy Bank escrow agreement?

17 A. No. There were no provisions for me to be paid by COFS or
18 Amegy Bank or anybody else, for that matter.

19 Q. Okay. So for the work you were doing in connection with
20 the escrow -- the Pro Petro escrow, all \$4 million of it,
21 wherever it was going, as of June 30th, the only moneys you
22 had received were the \$10,000 reflected in Exhibit 4 and the
23 \$7,500 reflected in Exhibit 6?

24 A. That is correct.

25 Q. Turning back to Exhibit 1, it appears to me that lines 10

1 and 13 are another example of money coming -- going out from
2 this account and then coming back in from Amegy Bank. It is a
3 wash.

4 Is that your understanding of how to read the
5 document, 10 and 13?

6 A. Yes.

7 MS. HYMAN: May I approach?

8 THE COURT: Yes.

9 BY MS. HYMAN:

10 Q. And, again, even though the money is a wash, because you
11 are sending money out and then you are getting money back in,
12 it reflects on your spreadsheet; is that correct?

13 A. That is correct.

14 Q. And that is because your intention is to reflect every
15 transaction, whether it ends up being a wash or it is canceled
16 or whatever?

17 A. Yes.

18 Q. I have handed you what has been marked as Exhibit 7, ELC
19 Exhibit 7. Could you identify this document for me, please?

20 A. It is a disbursement authorization called number 1,
21 payable to Tier 1 Sands in the amount of \$155,232 exactly for
22 invoice number 2744.

23 Q. And is invoice number 2744 attached?

24 A. Yes, it is.

25 Q. And what does that document reflect?

1 A. It reflects the invoice with railcar numbers for
2 1,120 tons at the rate of \$99 per ton for 40-70 northern
3 white.

4 THE COURT: And what date is that?

5 THE WITNESS: The date on the invoice is July 5th of
6 2017.

7 THE COURT: Thank you.

8 THE WITNESS: And the second item reflected is
9 448 tons of 100 mesh at the rate of \$99 per ton.

10 MS. HYMAN: I offer ELC Exhibit 7.

11 MR. JEFFERSON: No objection.

12 THE COURT: That is admitted.

13 BY MS. HYMAN:

14 Q. Did you disburse \$155,232 in accordance with this
15 disbursement authorization?

16 A. I did.

17 Q. Is that reflected on line 11 of your spreadsheet?

18 A. Yes, it is.

19 Q. On the second page of Exhibit 7 there is also a -- I see
20 the \$155,232 in the middle of the page, and then I see a flat
21 fee, Bates Energy Oil & Gas, LLC, \$1,000 admin fees.

22 Did you disburse that \$1,000 reflected on that
23 document as well?

24 A. I don't recall. It is possible that I did, but I don't
25 recall. Because it is not reflected on the spreadsheet, I

1 question whether I did or didn't.

2 Q. Actually, if you look at line 12, I thought I did see it
3 reflected on the --

4 A. It is very possible. Yes, it is. Yes, it is. You are
5 correct.

6 Q. Okay. When I spoke at the beginning of the hearing, I
7 mentioned that there is some money reflected on your
8 spreadsheet in line 30, pending receivable 204,000-some-odd
9 dollars?

10 A. Yes.

11 Q. Is that related in any way to this document?

12 A. Yes, it is. That was the item number 11, together with
13 item number 23, comprising the total sum of sand purchased for
14 the benefit of COFS -- COFS between -- for -- that Bates
15 procured and delivered on behalf of this agreement and this
16 MOU, which was rejected by COFS.

17 THE COURT: Is there any bills of lading for those?

18 THE WITNESS: Not in my possession at this time.

19 There may be. I don't know -- I don't believe I have them.

20 THE COURT: But if you don't have them, then under
21 this agreement, how do you have this as a receivable?

22 THE WITNESS: The receivable is reconciled from the
23 invoice provided by Bates Energy to Transload Sand Sales in
24 Oklahoma, who has agreed to purchase this sand and resell it.

25 THE COURT: I guess what I don't understand is, why

1 are you even putting yourself in this position? I mean, if
2 you are just the neutral, if there are disputes about all of
3 this, why aren't you just letting the procurer of sand fight
4 this out with Bates individually? Why are you throwing
5 yourself in the middle of this?

6 THE WITNESS: I am not sure how to answer that
7 question, sir. I apologize.

8 THE COURT: Well, I mean, your role is real clear.
9 You get a bill of lading. The way I interpret the escrow
10 agreement, you have to be instructed by COFS to issue payment
11 and you have a duty to notify COFS once payments are
12 disbursed, so why are you even keeping pending receivables?

13 THE WITNESS: In order to offset expenses paid.
14 This money is supposed to come back to ELC to offset the sand
15 that was purchased by Bates Energy Oil & Gas to provide to
16 COFS, who rejected it.

17 THE COURT: But how do you know that? Do you have a
18 bill of lading and how do you know it has been rejected?

19 THE WITNESS: The conversations that I have between
20 Mr. Bates and Mr. Bravo, who runs the sand supply on the other
21 side.

22 THE COURT: So, again, even though you are the
23 neutral, you are just relying upon verbal statements made by
24 Bates for all of this?

25 THE WITNESS: Verbal and text messages.

1 BY MS. HYMAN:

2 Q. Did you also rely on verbal statements and text messages
3 from Janis Kline in your dealings with COFS?

4 A. Yes.

5 THE COURT: But that is like a red herring to me.
6 Are they contesting those amounts?

7 MS. HYMAN: I don't know, Your Honor.

8 THE COURT: Well, I mean, let's get to it. Are you
9 guys contesting those amounts?

10 MR. JEFFERSON: The amounts paid to CSI were -- they
11 are all properly accounted for. They are in the Amegy records
12 and we are not contesting those payments. We knew they were
13 going through the EL -- I am sorry. COFS knew they were going
14 through the ELC account and that's not a contested matter.

15 (Mr. Jefferson conferring.)

16 THE COURT: You still stand by that statement?

17 MR. JEFFERSON: Yes.

18 THE COURT: Okay.

19 MR. JEFFERSON: That statement is correct.

20 THE COURT: Go ahead. I guess why I ask, it is
21 11:45. I mean, how much more are we going to have of all of
22 this? Do you have any more witnesses?

23 MR. JEFFERSON: No more witnesses, Your Honor.

24 THE COURT: Are you going to have any additional
25 witnesses, Ms. Hyman?

1 MS. HYMAN: No, Your Honor. I am agreeing to the
2 injunctive relief. I don't --

3 THE COURT: And so -- well, then, let's get to the
4 chase, then, I mean, because the way I look at this, there is
5 a substantial likelihood of prevailing on the merits. I do
6 believe there is a substantial likelihood that Equity Liaison
7 Company violated the terms of Exhibit 2.

8 And so with that, I am looking at the other factors.
9 Substantial threat of irreparable harm if the injunction is
10 not granted. I believe there have been, at best,
11 characterized charitably, irregularities in these
12 disbursements.

13 Three. The threatened injury outweighs any harm
14 that may result from the injunction to the nonmovant. Now,
15 there, I am concerned about the 204 226. I mean, it seems
16 clear that the 308,662 needs to go into the registry of the
17 Court, but how do you address the 204?

18 How is this -- and that's why I was asking the
19 questions earlier of Mr. Naumann. I mean, it seems that if
20 this 204,226 bill does come in, and it is a real bill, it is a
21 bill that that sand company has with Bates.

22 How is your client implicated by having that 204,226
23 going to the registry of the Court? How is this client
24 harmed?

25 MS. HYMAN: He is not, Your Honor. It is not his

1 money.

2 THE COURT: That's what I thought. And there is no
3 undermining of the public interest by that. So shouldn't all
4 513,000 or so that is remaining in this account be placed in
5 the registry of the Court?

6 MS. HYMAN: Well, that 204 needs to come in from the
7 purchaser. It is not money that he has.

8 THE COURT: Well, how much money is in the account
9 right -- total. I don't want accounts receivable. I want to
10 know, how much total is in that account right now?

11 MS. HYMAN: \$308,622.35.

12 THE COURT: So, then, the earlier representation,
13 there is a net of only like \$100,000, supposedly, out of this
14 million?

15 MS. HYMAN: I am not understanding.

16 THE COURT: Well, this 204, I mean, if a true bill
17 of lading came in and it is correct, and if this equity
18 agreement had not been terminated and the bill came through,
19 would that 204 get deducted from the 308?

20 MS. HYMAN: No. Added to.

21 THE COURT: Added to. Okay. Added to. It is a
22 pending receivable to this account. Okay. I follow now.

23 And so -- well, where is that money right now, then?

24 MS. HYMAN: That is the sand -- the sand was
25 purchased, and so the money came out of the account, but

1 then -- maybe we should let Mr. Naumann --

2 THE COURT: Yes. I am trying to figure out how much
3 money needs to be deposited into the registry of the Court.
4 That is what I am trying to figure out.

5 THE WITNESS: If I could, sir.

6 THE COURT: Go ahead.

7 THE WITNESS: If you add the 155 and the 44
8 together, which comprises the two purchases of sand that were
9 meant for COFS from Tier 1, you combine those, which were
10 purchased at a rate of \$94, I believe it was, \$99, the sand is
11 being sold through Transload Sand Sales in Oklahoma at a
12 higher rate, I believe at 104.

13 The other party to the agreement has agreed to put
14 all 204 of it back with me and turn it back over into the
15 escrow account.

16 THE COURT: When is that deal supposed to close?

17 THE WITNESS: It is one of the -- as anybody in the
18 sand business knows, it is 30, 60, 90-day net, and we are
19 about 30 days into this deal.

20 THE COURT: So let me ask it this way. Has the sand
21 actually been delivered by Tier 1 to whoever the new buyer is?

22 THE WITNESS: Yes. As far as I know. As far as I
23 know, the sand was purchased, delivered, and it has been sold
24 to the user in the field, who is apparently on a 30 or 45 or
25 60-day net turnaround payment period with Transload Sand

1 Sales. So the money is coming back.

2 THE COURT: Okay. So, I mean, why shouldn't the
3 order for today be that the \$308,662.35 be immediately placed
4 in the registry of the Court and that directions be given to
5 Tier 1 that upon receipt of its moneys, the \$204,226.97 should
6 be made payable to the registry of the Court? Why isn't that
7 a solution here today?

8 THE WITNESS: Well, it is not Tier 1.

9 THE COURT: Or whoever it is.

10 THE WITNESS: It is --

11 MS. HYMAN: Transload.

12 THE WITNESS: -- Transload Sand Sales.

13 THE COURT: Transload. So, I mean, why isn't that
14 the solution today?

15 MS. HYMAN: That's fine with us.

16 THE COURT: So if that was the order, your client
17 wouldn't be harmed in that fashion?

18 MS. HYMAN: No. I mean -- no.

19 THE COURT: So, Mr. Jefferson, I mean, why -- I know
20 you want a million bucks, but there is not a million bucks
21 here. So, I mean, for purposes of today, I mean, the fight
22 continues, I guess, with whatever claims you have against
23 Equity Liaison and Bates, but why isn't that an appropriate
24 solution to today?

25 MR. JEFFERSON: Yes, Your Honor. That sounds like

1 that's as best as we can do today, is gather all of the funds
2 that we possibly can, get them out of his hands, so he doesn't
3 get --

4 THE COURT: Let's not make it all that personal.

5 MR. JEFFERSON: Right.

6 THE COURT: Just stick to a solution. Okay?

7 MR. JEFFERSON: Protect the funds, whatever funds
8 are available.

9 THE COURT: So is there anything wrong or, from your
10 client's perspective, needs to be adjusted from what I just
11 said?

12 MR. JEFFERSON: I think that covers all of the
13 assets that we know about. So if we learn about additional
14 assets -- and that's, I think, a crucial part of today's
15 proceeding is to understand -- and I think we got some
16 information, but to understand --

17 THE COURT: And by the way, I want to make what you
18 received today an exhibit, because as we continue on, I want
19 to understand what happened, so I want copies of all of that
20 made as an exhibit and a part of the record.

21 MR. JEFFERSON: And it is all Bates stamped, Your
22 Honor, so we can follow -- Ms. Hyman has done a good job
23 there. But we need an accounting. We need to understand
24 exactly where the money went.

25 THE COURT: Well, when you say you need an

1 accounting, I mean, it has been tendered to me that that is
2 the accounting. And I know you haven't had enough time to
3 look at it, but I mean, at first blush, do you think it is a
4 deficient accounting or what?

5 MR. JEFFERSON: I don't know. I guess if the
6 representation is, this is an accounting, then we would like
7 at least to -- obviously, we would like to have the
8 opportunity to examine it.

9 And part of the suspicion here, Your Honor, is --
10 this is not a secret. I mean, Mr. Naumann was served with a
11 TRO when it was signed, the day that it was signed, and that
12 was on September 15.

13 Ms. Hyman has had some documents in her possession
14 at least since Friday. And she told me, let's pass the
15 hearing. I will give you the documents I have. We have not
16 had a chance to look at any of this stuff until right now. It
17 is being shown to us now as we are going through the hearing.

18 So we do want to have an opportunity to inspect and
19 test whether these documents are real or not. I mean, a lot
20 of the documents -- and we have heard from Mr. Naumann, a lot
21 of the documents on which he based his payment decisions have
22 nothing but ELC and Bates documents on them. There is no
23 third party.

24 The ones that do have a third party on them are from
25 David Bravo, who is an employee. So this is a highly

1 suspicious accounting, if it is an accounting whatsoever. And
2 so we would just like the opportunity -- number one, the order
3 remain in place that an accounting be done, if it hasn't; and
4 secondly, the opportunity to test whether or not this is
5 really an accounting or whether this is made up.

6 THE COURT: Well, let me go to the first point, the
7 accounting.

8 So, Ms. Hyman, is this accounting or was this a
9 preliminary attempt, or is there further work to come, or is
10 this it?

11 MS. HYMAN: This is it. Obviously, if there is
12 additional information they need, I am happy to work with them
13 to try to locate any additional information.

14 THE COURT: So this is the accounting. So to the
15 extent that later, as you review the documents, you find there
16 are deficiencies or questions, I expect you to confer with
17 Ms. Hyman. I respect both of you all. You all know how to do
18 this.

19 But if there is an inadequate accounting or it is
20 unexplained for, then we can have another hearing about why
21 the terms of the restraining order have been violated, or the
22 injunction.

23 And so with regard to the injunction here, I will
24 leave it to the two of you to draft the document, but whatever
25 money is left in this account, not less than \$308,662.35, but

1 if there is more money in this account, all of that money in
2 that account is to be placed in the registry of the Clerk's
3 Office.

4 With regard to the \$204,226.97, you all work out
5 language that whoever the buyer of this sand is, once they
6 have made the payment, the payment goes into the registry of
7 the Court, and I will leave you all to write the order.

8 Is there anything else we need to address today?

9 MR. JEFFERSON: I don't believe so, Your Honor. I
10 think that covers it, but, obviously, there are a lot of
11 questions. And what we would at least like to know is, who is
12 the buyer of this sand and --

13 THE COURT: Well, he stated it earlier.

14 MS. HYMAN: I would have gotten there, but --

15 THE COURT: Well, he told me earlier.

16 MS. HYMAN: Yes. And I have a document.

17 THE COURT: What is the name again, sir?

18 THE WITNESS: Transload Sand Sales in Oklahoma.

19 MS. HYMAN: It is Bates numbered ELC 000097, the
20 invoice.

21 THE COURT: So I fully understand that this is just
22 a preliminary injunction and the fight continues, so I know
23 that there is going to be more to this. But for purposes of
24 today, is there anything -- is there any further relief your
25 client seeks that we have not addressed? Not to say you are

1 going to get it. I just want to know if there is anything
2 else out there.

3 MR. JEFFERSON: Your Honor, we have addressed
4 everything that is in our application at this point.

5 THE COURT: Anything else from your perspective,
6 Ms. Hyman?

7 MS. HYMAN: No, Your Honor. I was willing to do
8 this as of Friday.

9 THE COURT: Well, but you had an obligation to turn
10 over what documents you had to turn over with regard to the
11 TRO, but like I said, I respect both of you all and there must
12 have been some reason for this.

13 Ms. Clausewitz, did you want to chime in at all
14 today?

15 MS. CLAUSEWITZ: No, Your Honor. We have nothing.

16 THE COURT: Give me the order in the next three days
17 while it is fresh in my mind.

18 We are adjourned.

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2 UNITED STATES DISTRICT COURT)

3 WESTERN DISTRICT OF TEXAS)

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.

6 I further certify that the transcript fees and format comply
7 with those prescribed by the Court and the Judicial Conference
8 of the United States.

9 Date signed: October 2, 2017.

10
11 /s/ Karl H. Myers

12 _____
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